

member of the Washington Chapter of Act **ACT** DEBTOR'S
REMEDIES MANUAL

Part IV-Repayment Plans, Bankruptcy,
and Other Alternatives

Chapter 14
BANKRUPTCY

Divorce - Child Support

Kresteller v Superior Court (1967) 248 ACA 675, 56 CR 771

Although the rule has been that a husband deprived of child custody has no duty of support under CC §196 if support is not mentioned in the divorce decree, the court in Kresteller rejects this rule on the grounds that the father has a duty of support under Pen C §270; and CC §137.1 permits maintenance of a civil action against a parent having a duty of support. The support action must be brought in the court that granted the divorce, since it has primary and continuing jurisdiction.

Bankruptcy

General Ins. Co. v Schian (1967) 248 ACA 685, 56 CR 767

In an action against a wife on a surety agreement jointly executed by husband and wife, the court held that only the wife's separate property or earnings could be reached to satisfy her obligation. The husband alone had obtained a discharge in bankruptcy absolving him from any liability under the contract. The court held that the husband's discharge operated to release from further liability both his separate property and all community property subject to his management and control.

Class Actions

Daar v Yellow Cab Co. (1967) 249 ACA 70, 57 CR 198

A taxicab passenger brought a class action in superior court on behalf of himself and other taxicab passengers to recover excessive rates allegedly charged by the Yellow Cab Co. in the preceding four years. Yellow Cab demurred on the ground that the court lacked jurisdiction over the amount in controversy because (1) there was no valid basis for a class action on behalf of other passengers, who, in the aggregate, had sustained damages above the jurisdictional amount, and (2) plaintiff, himself, had not claimed damages in excess of \$5,000. Plaintiff appealed the court's order sustaining the demurrer and transferring the action to municipal court.

The Court of Appeals preliminarily decided that the trial court's order sustaining the demurrer was a "final judgment" from which plaintiff could appeal under CCP §963. However, the appellate court upheld the trial court's order sustaining Yellow Cab's demurrer. In its decision, the court reasoned that a class action requires a "common interest" between those prosecuting the litigation and the non-litigants also represented by the action. The court distinguished between what it called "uniformity of interests" and "common interests"; no "common interest" exists between persons who merely have similar claims against the same person. Rather, the court implied that the claims must be dependent on one another, i.e., no class action exists if, as in

Divorce - Child Support

Wheeler v. Wheeler (1957) 205 Ala. 575, 57 Ala. 771

Although the rule has been that a husband desisted of this
 custody has no duty of support under CO 1957 if support is not
 mentioned in the divorce decree, the court in Wheeler
 this rule on the grounds that the former has a duty of support
 under CO 1957 and CO 1951. The court's maintenance of a civil
 action against a parent having a duty of support. The support
 action must be brought in the court that granted the divorce,
 since it has primary and continuing jurisdiction.

Family Law

General Int. Co. v. Jackson (1957) 205 Ala. 582, 58 Ala. 781

In an action against a wife on a jointly executed jointly
 executed by husband and wife, the court held that only the wife's
 separate property or earnings could be reached to satisfy her
 obligation. The husband alone had obtained a discharge in bank-
 ruptcy, relieving him from any liability under the contract. The
 court held that the husband's discharge entitled to release him
 from liability for his separate property and all community
 property subject to his management and control.

Class Actions

Best v. Yellow Cab Co. (1957) 205 Ala. 701, 57 Ala. 705

A taxicab passenger brought a class action to set aside an
 on behalf of himself and other taxicab passengers. The court
 dismissed the action on the ground that the Yellow Cab Co. was not
 interested in the case. Yellow Cab Co. was not interested in the
 case. The court lacked jurisdiction over the subject in controversy.
 because (1) there was no valid basis for a class action in be-
 half of other passengers, who, as the plaintiff, had submitted
 damages above the jurisdictional amount, and (2) plaintiff
 himself, had not claimed damages in excess of \$5,000. Plaintiff
 appealed the court's order sustaining the demurrer and trans-
 ferring the action to municipal court.

The Court of Appeals preliminarily decided that the trial
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 Cab's demurrer. In its decision, the court reasoned that a class
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 litigation and the non-litigants also represented by the action.
 The court distinguished between what it called "unity of in-
 terests" and "common interests": no "common interests" exists
 between persons who merely have similar claims against the same
 person. Yellow Cab Co. was not interested in the case.

BOOKS AND PERIODICALS

This list is prepared by Carleton Kenyon, Law Librarian, California State Library, Sacramento. All the books, articles, and documents are available by interlibrary loan from the State Library. Interlibrary loans may be arranged through any county, city, or other library.

Table of Subjects

ADOPTION	DOMESTIC RELATIONS COURTS
BANKRUPTCY	JUVENILE COURTS
CHILDREN	LEGAL AID
CONSUMER PROTECTION	MENTAL HEALTH
CUSTODY	REFERRAL SERVICES
DEBTOR AND CREDITOR	SOCIAL WELFARE
DISCRIMINATION IN EMPLOYMENT	UNEMPLOYMENT INSURANCE
DOMESTIC RELATIONS	USURY
	GENERAL

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Congress amends National Bankruptcy Act. Alexander L. Paskay. 72 Commercial Law Journal 31-34 (1967).

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DOMESTIC RELATIONS	USURY
	GENERAL

ADOPTION

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CONSUMER PROTECTION (Continued)

CHAPTER 9

BANKRUPTCY

This draft will be revised and distributed as part of the California CEB-OEO Debtors' Remedies Manual. Several authors have cooperated in the preparation of material for this draft.

Part I - Evaluation of Remedy

David Gill, Attorney, Los Angeles

Part II - Interviewing Bankruptcy Client

CEB-OEO staff with cooperation
of Alameda County Legal Aid Society

Part III - Prebankruptcy Role of Attorney

Robert Hughes, Attorney, Oakland

Part IV - Bankruptcy Procedures

Robert Ward, Attorney, Oakland
and CEB-OEO staff

Part V - Post-Bankruptcy Counseling

Stuart Kaplan, Attorney, San Francisco
(NOT INCLUDED IN THIS DRAFT)

APPENDIX

This book will be useful to all who are interested in the history of the United States and the people who have lived in it. It is a book of facts and figures, and it is written in a simple and straightforward manner. It is a book that will be of interest to all who are interested in the history of the United States and the people who have lived in it.

Part I - Introduction

David W. Davis, Secretary, for the

Part II - Introduction

David W. Davis, Secretary, for the

Part III - Introduction

David W. Davis, Secretary, for the

Part IV - Introduction

David W. Davis, Secretary, for the

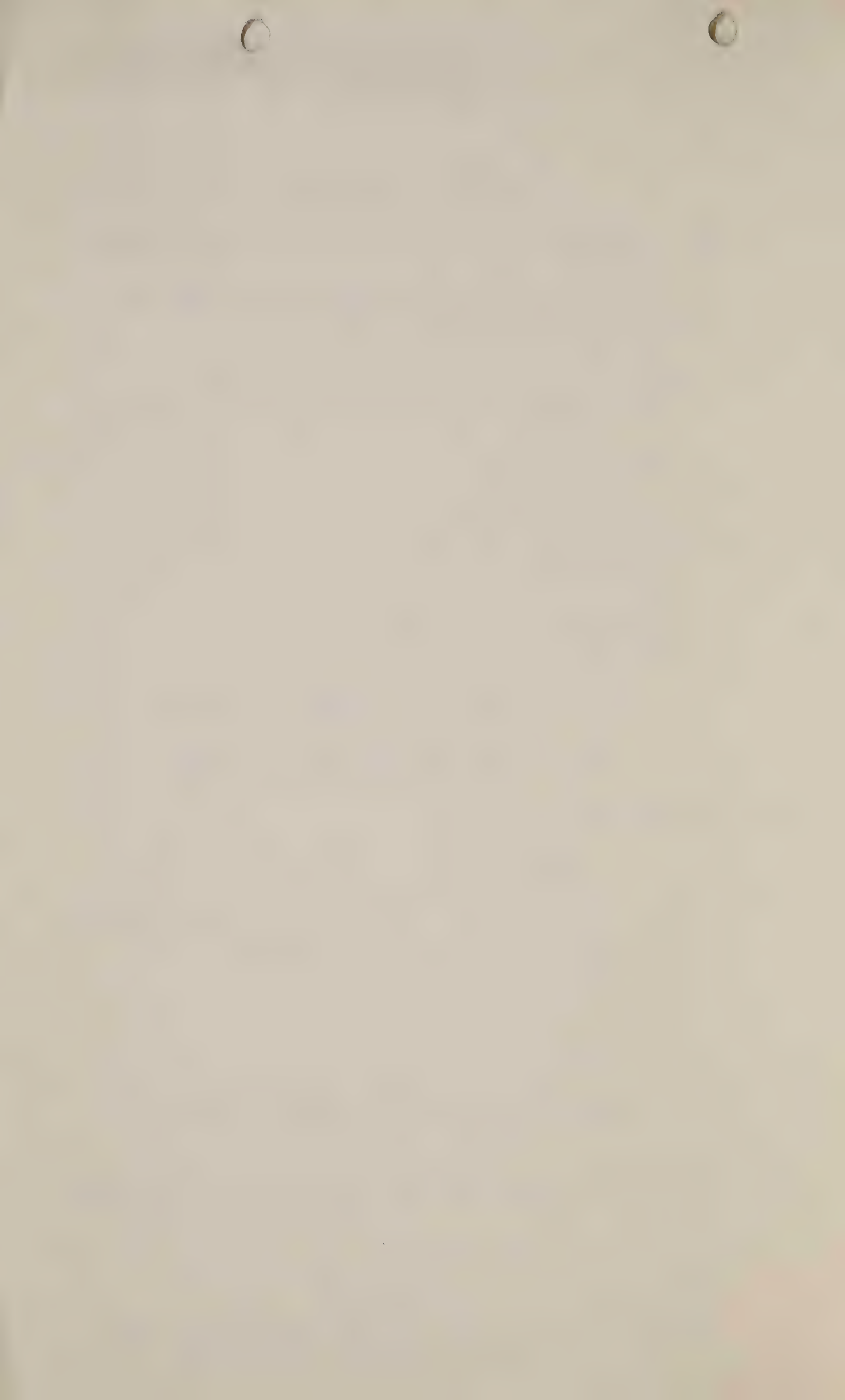
Part V - Introduction

David W. Davis, Secretary, for the

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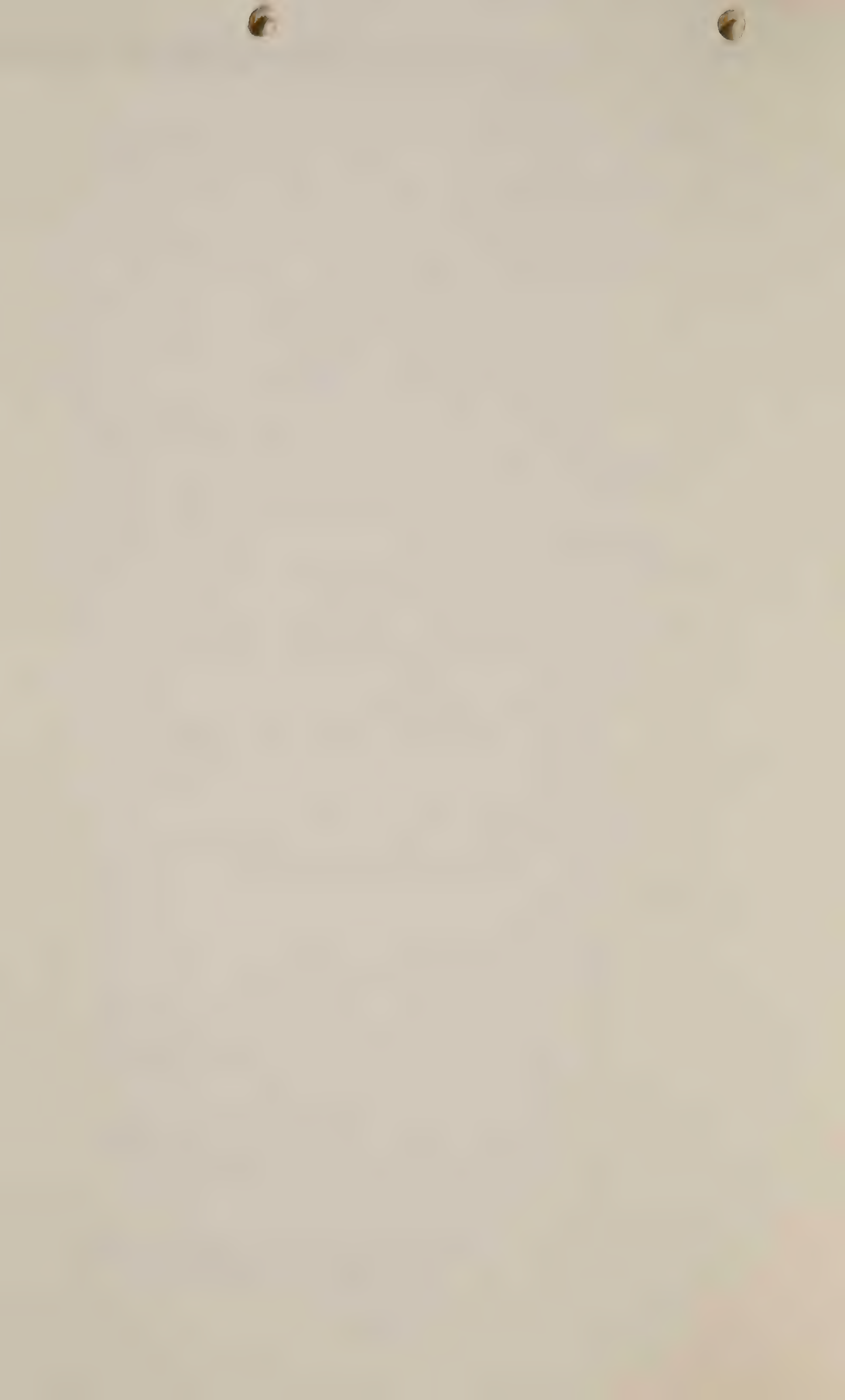
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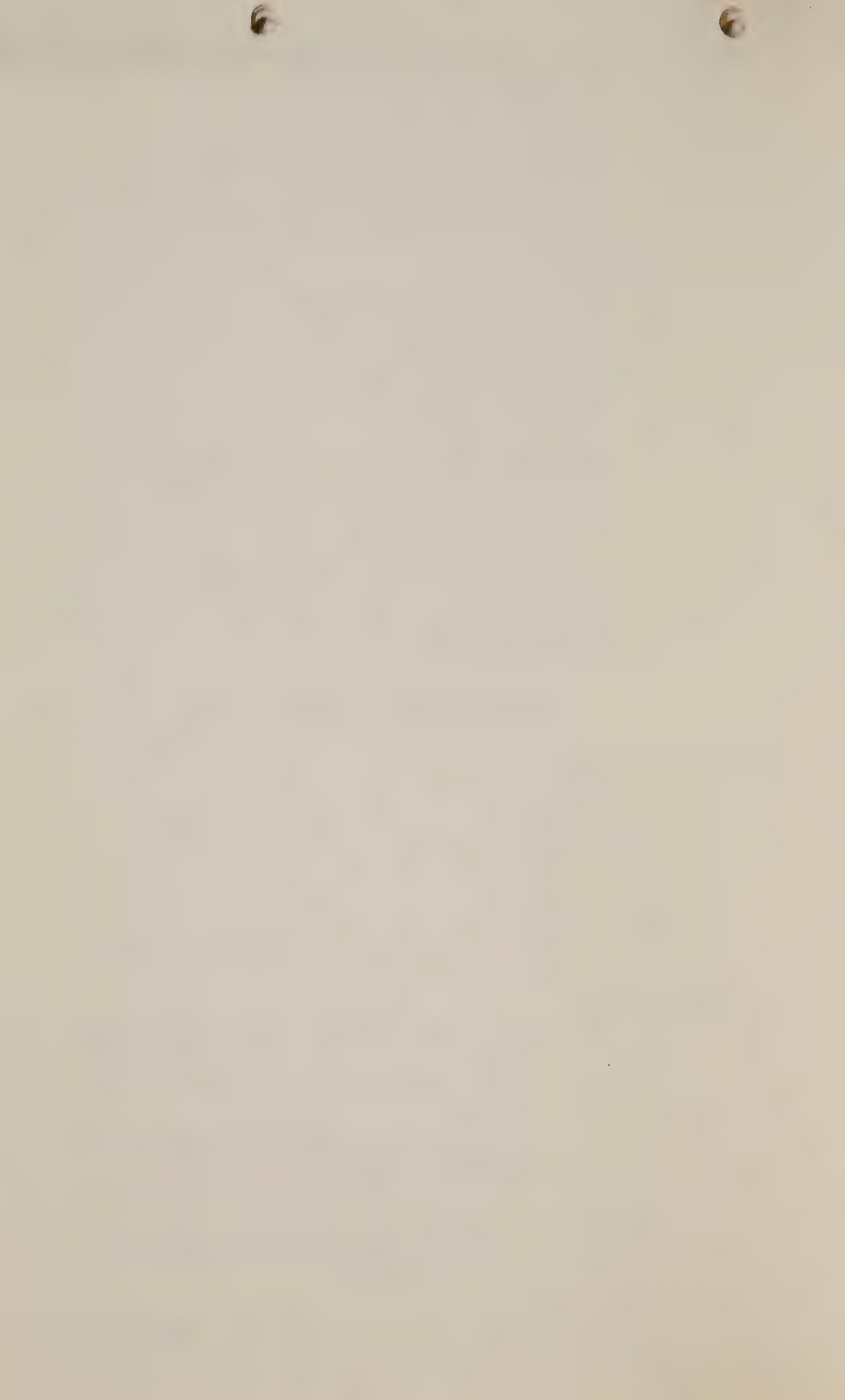
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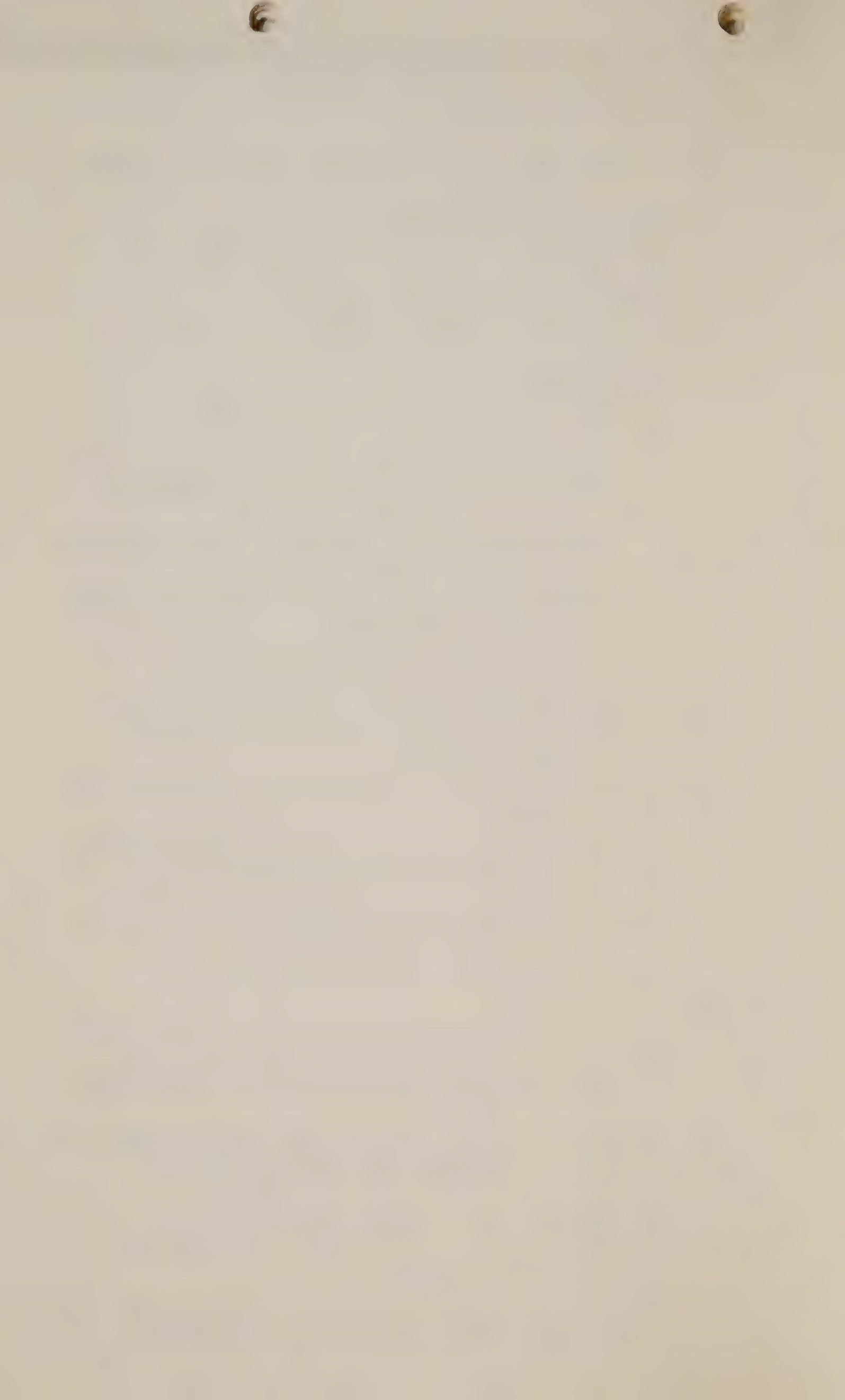
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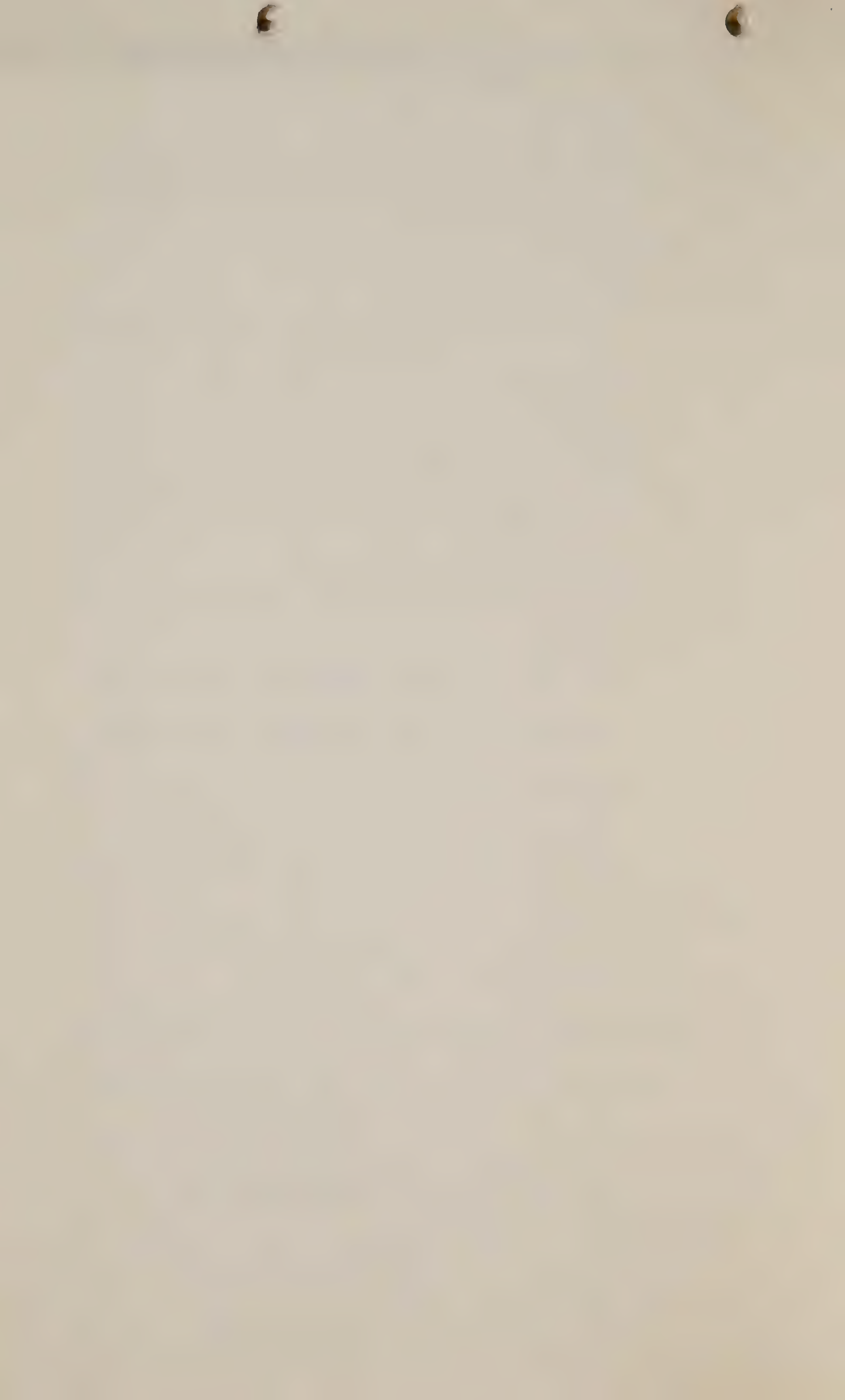
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VI. [§9.] WAGE EARNER PLANS

VII. NAMES AND ADDRESSES



Evaluation of
Remedy
Non-business Debtors

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(E)

I. EVALUATION OF REMEDY

A. [§9.1.1] REMEDIES AVAILABLE TO THE INSOLVENT NON-BUSINESS DEBTOR

Determination by counsel of the appropriate remedy for the financial difficulties of a nonbusiness debtor is about as complex as a similar analysis for financially embarrassed businessmen. The problem in many cases is complicated by the nonbusiness debtor's lack of accurate records and the practical time problems faced by one attempting to counsel a person who frequently faces immediate wage attachment. There are several types of relief available to such a debtor. See §§9.1.2-9.1.5. The factors counsel should consider in recommending the most appropriate remedy as well as one method for accurately and economically compiling the factual information essential to such a determination are discussed in §§9.1.6-9.1.27.

1. [§9.1.2] Negotiating or Litigating With Creditors

In most cases in legal aid offices the debtor is driven to counsel by some creditor action, normally wage attachment or threats of it. Counsel should, after obtaining the necessary factual information, analyze the merit of the claim and determine that all exemption rights of debtor are used. See §§9.3.13-9.3.23; I California Family Lawyer, §§8.55-8.71 (Cal CEB 1961); Cowans, BANKRUPTCY LAW AND PRACTICE



§§589-592 (1963)(hereafter referred to as Cowans §___). He should also attempt to ascertain whether the debtor is being subjected to illegal or improper collection practices and, if he is, forcefully call such wrongs to the attention of the creditor involved and, if necessary, to appropriate state or local authorities. See 1 Family Lawyer §§8.72-8.75.

Negotiation is often possible, and is usually the easiest solution, if the creditor is reasonable, the obligation actually owed, and the debtor able to manage some payment. Litigation is, of course, less expedient, but when a real challenge to the validity of the debt exists, the attorney who fails to raise the issue often is not adequately representing his client. The validity, amount, and number of creditors' claims will affect the determination of whether individual negotiation and settlement, active defense of the claim, or a more drastic remedy is called for.

2. [§9.1.3] Consolidation Loans

Another approach often taken by debtors, usually prior to consulting an attorney, is the so-called consolidation loan. The debtor is encouraged to reduce his indebtedness to "one convenient monthly payment" by refinancing his obligations; that is, by borrowing sufficient funds to liquidate existing

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indebtedness and then repay the refinancing agency in amounts within his budget. In some cases this method may prove satisfactory in terms of convenience to the debtor and avoidance of legal fees. If such a loan has already been obtained before the attorney interview, counsel should determine that the loan transaction itself is proper; particularly that the debtor has not paid, with the new loan, unearned interest on old obligations. See, e.g., California Civil Code §§1807.1-1807.3 (Unruh Act). This is particularly important when the lending agency is paying itself off on a prior obligation, i.e., rewriting its own paper. The attorney must determine whether the old obligation, if rewritten, includes unearned finance charges, with new charges tacked onto that amount ("flipping"). This may make the obligation usurious. In re Branch (ED Tenn. 1966) _____ F Supp _____.

If debtor sees the attorney before the loan transaction is consummated, the attorney should make sure that the client understands the actual cost of the obligation he is undertaking. Many people are unfamiliar with permissible finance charges, and may be misled by the words used to quote interest rates. The following chart, reprinted from a brochure issued by the California Consumer Counsel, summarizes the maximum credit rates under California law.

MAXIMUM CREDIT RATES UNDER CALIFORNIA LAW

<u>MAXIMUM RATE STATED IN THE LAW</u>		<u>EQUIVALENT IN SIMPLE ANNUAL INTEREST</u>
<u>CREDIT PURCHASES</u>		
Revolving charge account. . .	On "outstanding balances from month to month":*	
	To \$1,000-1-1/2% per month. . .	18% (or more)*
	Over \$1,000-1% per month. . . .	12% (or more)*
Auto installment contract . .	On "unpaid balance":**	
	1% per month.	22.2%**
Other installment contracts. .	On "unpaid balance":**	
	To \$1,000-5/6 of 1% per month	18.5%**
	Over \$1,000-2/3 of 1% per month	14.8%**
<u>LOANS</u>		
Individual lender . . .	On unpaid balance:	
	10% per year.	10%
Credit union	On unpaid balance:	
	1% per month.	12%
Bank	No maximum.	No maximum
Savings and loan assn. .	No maximum.	No maximum
Finance company:		
Personal property broker. . .	On unpaid balance:	
	To \$200-2-1/2% per month. . . .	30%
	Over \$200-\$500-2% per month . .	24%
	Over \$500-\$5,000-5/6 of 1% per month	10%
Industrial loan company	On unpaid balance:	
	To \$200-2-1/2% per month. . . .	30%
	Over \$200-\$700-1-1/2% per month	18%
	Over \$700-\$10,000-5/6 of 1% per month	10%
Pawnbroker . .	On unpaid balance:	
	To \$100-2-1/2% per month. . . .	30%
	Over \$100-\$500-2% per month . .	24%
	Over \$500-5/6 of 1% per month .	10%

*Because the law does not clearly define "outstanding balances," retailers are free to apply credit charges in ways that permit the rate to exceed 18% per year.

**In these contracts, the credit charge is imposed on and added to the total amount owing at the start of the contract, rather than on the unpaid balance from month to month; hence, an add-on rate of 12% (1% per month on a 12-month contract) is equivalent to 22% simple annual interest. The simple annual interest rates shown on this page are for 12-month contracts; when the add-on method is used, the rates will be higher for 2-year and 3-year contracts.

Interest charges will differ if the interest quoted is added to the purchase price and repaid in a fixed amount of installments, or if charged only on the unpaid balance. For examples, see the following chart, prepared by the California Consumer Counsel.

YOU SAVE MONEY--If You Know What Credit Costs

When you buy on credit, you pay an extra charge. Whether that extra charge is called "interest," "service fee," "carrying charge," or anything else, it raises the price of what you buy. It can keep you from buying other things you need. For example:

*A store sells a refrigerator for \$329.95. On a 24-month contract with a \$10 down payment, you can pay the store \$66 extra for credit--enough to buy 285 quarts of milk.

*One of the new "compact" cars costs \$2660.52, with deluxe accessories, sales tax, and license. With a \$460.52 down payment, credit charges on the \$2200 balance on a 36-month contract can cost you over \$400--enough to pay cash for a washing machine and a drier.

How much credit costs you depends on the *rate of interest* and the *length of the loan*. Both affect the total cost of credit. The smart shopper gets credit at the lowest possible rate of interest for the shortest possible period of time. Credit costs vary widely, so it is worth your while to shop for credit carefully. Some commonly-quoted credit charges are expressed in true annual interest rates for you in the chart on the right.

HERE'S WHAT YOU PAY FOR CREDIT

If added to purchase price and total repaid in 12 equal monthly payments:

When they say	you pay*
4% per year:	7.3%
6% per year:	10.9%
8% per year:	14.5%
10% per year:	18.0%
1% per mo.:	21.5%

*In true annual interest
True
annual
interest

If charged only on unpaid balance	
3/4 of 1%	per month on unpaid balance = 9%
5/6 of 1%	per month on unpaid balance = 10%
1%	per month on unpaid balance = 12%
1-1/4%	per month on unpaid balance = 15%
1-1/2%	per month on unpaid balance = 18%
2-1/2%	per month on unpaid balance = 30%

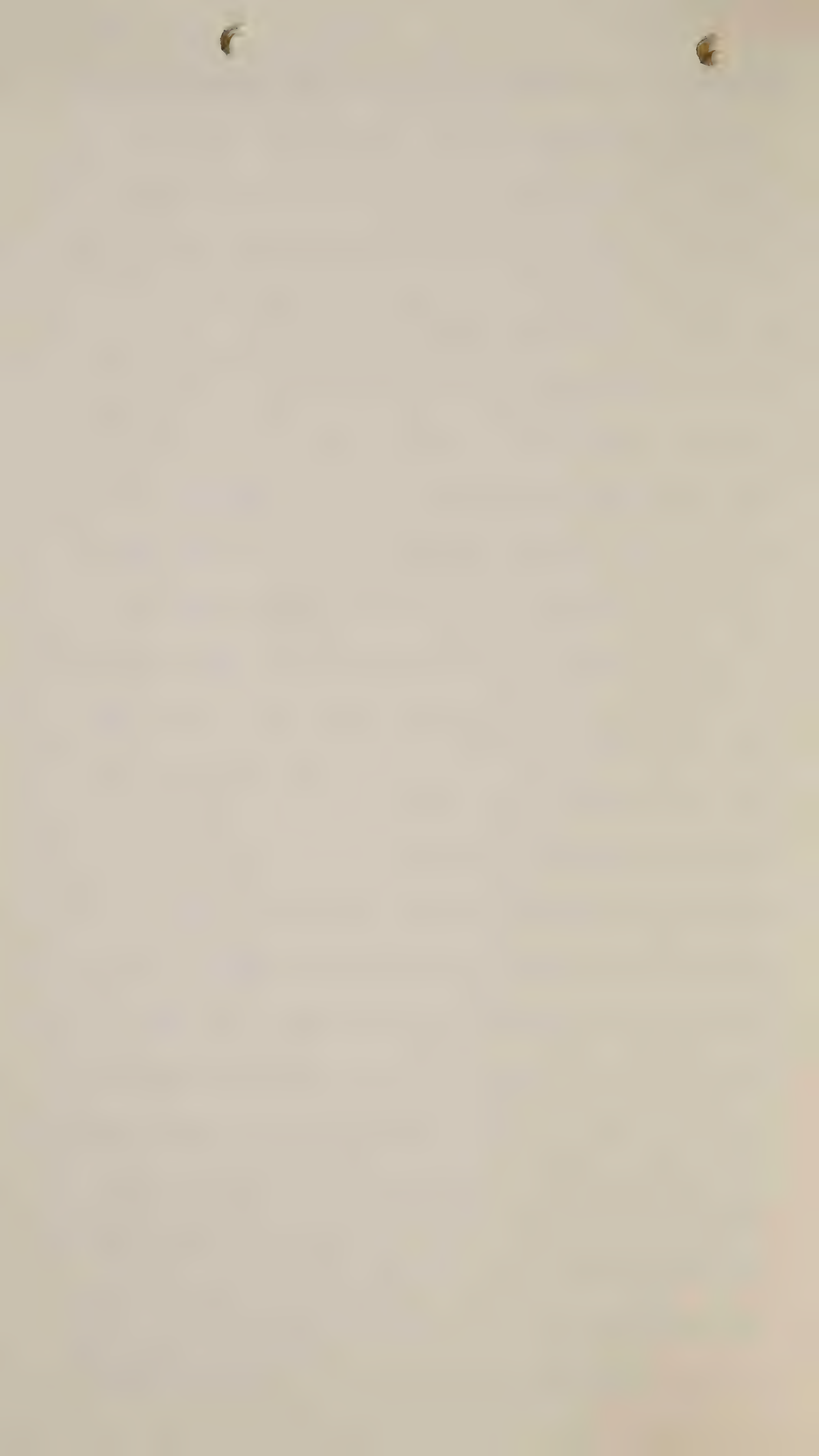
(This brochure is a service to the people of California provided under an Act of the State Legislature, requested by Governor Brown. It was compiled by State Consumer Counsel Helen Nelson, Governor's Office, Sacramento.)

Further, in the event that the "consolidation loan" is secured, the attorney should be sure that the client understands

the terms of the security agreement he signs, particularly if it contains provisions covering security not now in the possession of the debtor but which may be acquired in the future, i.e., an after acquired property claim. See §9.1.16.

3. [§9.1.4] Professional Adjustment of Debts

A variety of professional debt adjustment services are available to the debtor, both of the fee and no-fee variety. Fee services, which are regulated by Fin C §§12002.1 et seq., receive "money...for the purpose of distributing the money... among creditors in payment or partial payment of past due obligations of the debtor." Fin C §12002.1. These proraters are licensed and bonded, and may charge a fee of 12% on the first \$3,000 disbursed to creditors, with a declining percentage on additional disbursements. Fin C §12314. Their function is generally to analyze the debts and negotiate with creditors for repayment of the debtor's obligations on a schedule which they establish and determine to be feasible for the debtor to handle. Participation by the creditor in such a plan arranged by a professional prorater is completely voluntary so that the debtor receives no protection from attachment or suit other than that engendered by the good will existing between the creditor and the prorater. This type of service has proved beneficial in certain situations.



It is, of course, imperative that the prorater with whom the client deals be reputable. Non-fee counselors performing a service similar to that of the fee prorater operate in certain cities in California. This type of credit counseling program has been established on a community service basis by banks, finance companies, merchants, and others interested in reversing the trend toward bankruptcy as the sole alternative for the insolvent debtor. It operates in much the same manner as the professional prorating services, but the number of debtors so served is considerably smaller. See Cowans §§70-82.

4. [§9.1.5] Wage Earners' Plans (Bankruptcy Act Chapter XIII)

In many cases, it will be in the debtor's best interests to consider the filing of a Wage Earner's Plan under Chapter XIII of the Bankruptcy Act (Bankruptcy Act §§601-686, 11 USC §§1101-1086) either as an original proceeding or as conversion of a pending bankruptcy. A "wage earner" is one whose principal income is derived from wages, salary or commissions. Bankruptcy Act §606(8), 11 USC §1006(8). Such an individual may obtain protection from creditor harassment and legal process while proceeding to liquidate his indebtedness according to a plan of his own choosing, assented to by some (not necessarily all) of his creditors, if the plan is approved and administered by the bankruptcy court. Bankruptcy Act §614, 11 USC §1014.

Under Chapter XIII the wage earner submits to the jurisdiction of the bankruptcy court all of his future earnings.

Bankruptcy Act §646(4), 11 USC §1046(4). His allowance of exemptions, however, is the same as that provided for a bankrupt. Bankruptcy Act §637, 11 USC §1037. The debtor will be eligible for ex parte injunctive relief against unsecured creditors, which will stay suit, attachment, execution, and other creditor action. Bankruptcy Act §614, 11 USC §1014.

See Bankruptcy of Arzoga (S D Cal 1962) 204 F Supp 617.

If cause is shown, temporary injunctive relief can also be had against secured creditors. Bankruptcy Act §614, 11 USC §1014.

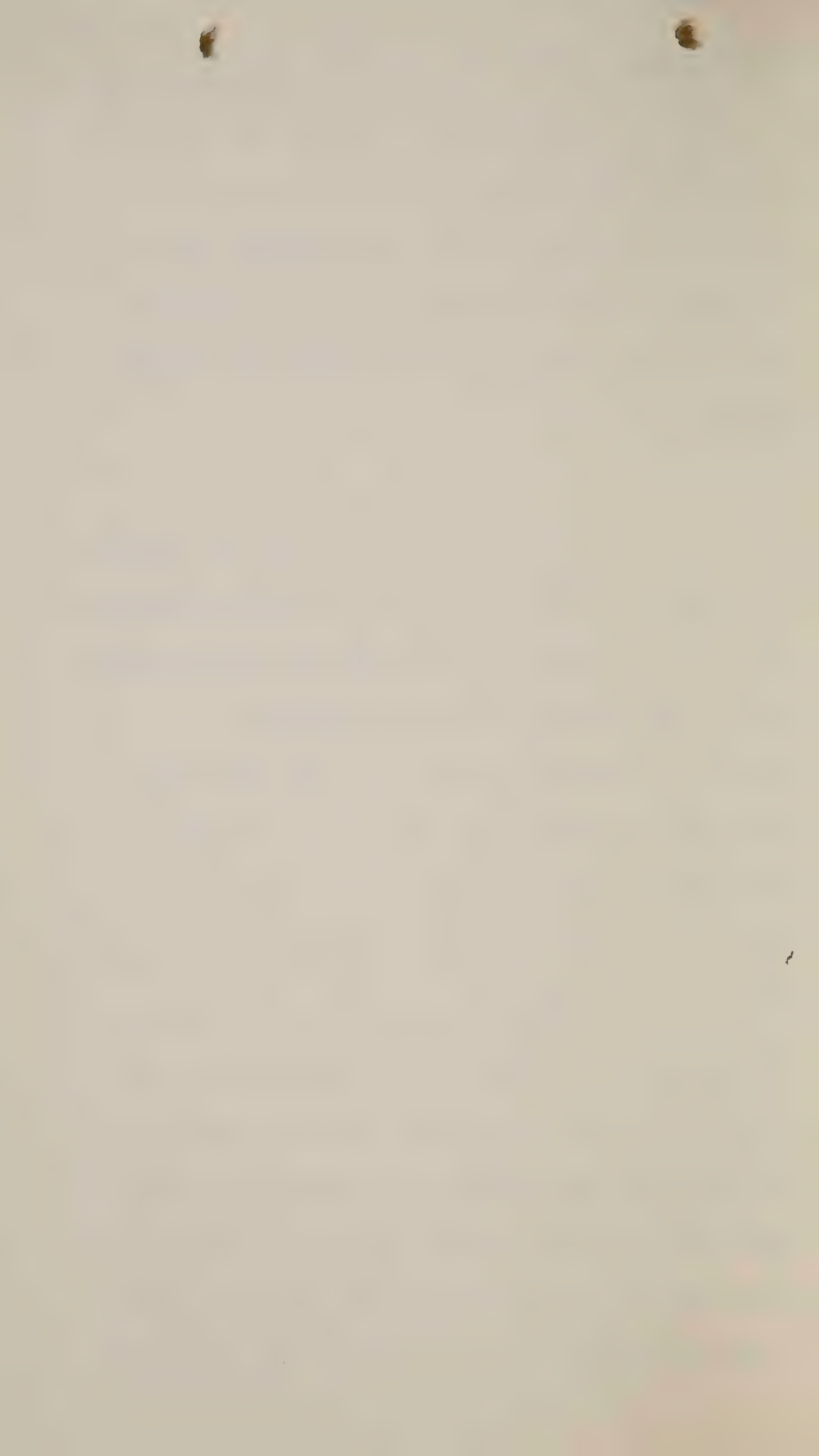
After obtaining temporary protection from his creditors the debtor will submit a plan to them, either for a composition of his indebtedness, or, more usually, for an extension of time to pay debts by utilizing future earnings. Debts secured by interests in debtor's real property may not be dealt with in such a plan. Bankruptcy Act §606(1), 11 USC §1006(1). Aside from such debts, however, the plan contemplates liquidation of all unsecured indebtedness, upon any terms, but on an equal basis, normally pro-rata to creditors filing timely claims within six months from the first meeting of creditors. Bankruptcy Act §§643, 646(1).

11 USC §§1043, 1046(1).

Creditors having security interests in personal property in debtor's possession may be dealt with severally on any terms. Bankruptcy Act §646(2), 11 USC §1046(2). Usually if sufficient funds are available, they will be paid prior to dividends to general unsecured creditors, but with reduced interest.

If sufficient funds are not available, a plan may provide for their payment pro-rata among themselves, or pro-rata with unsecured claims. When the plan is confirmed, it is binding upon the debtor and all creditors, whether or not they are affected by the plan, have accepted it, or have filed their claims, and whether or not their claims have been scheduled, allowed, or are allowable.

Bankruptcy Act §657, 11 USC §1057. A secured creditor may be persuaded to participate in the plan by an offer of preferential treatment. If a secured creditor does not accept the plan, he does not lose his lien, but may realize on his security only through a reclamation proceeding in the bankruptcy court, since that court has jurisdiction over all of debtor's assets. If he attempts to enforce the lien outside the bankruptcy court, he may be enjoined for the duration of



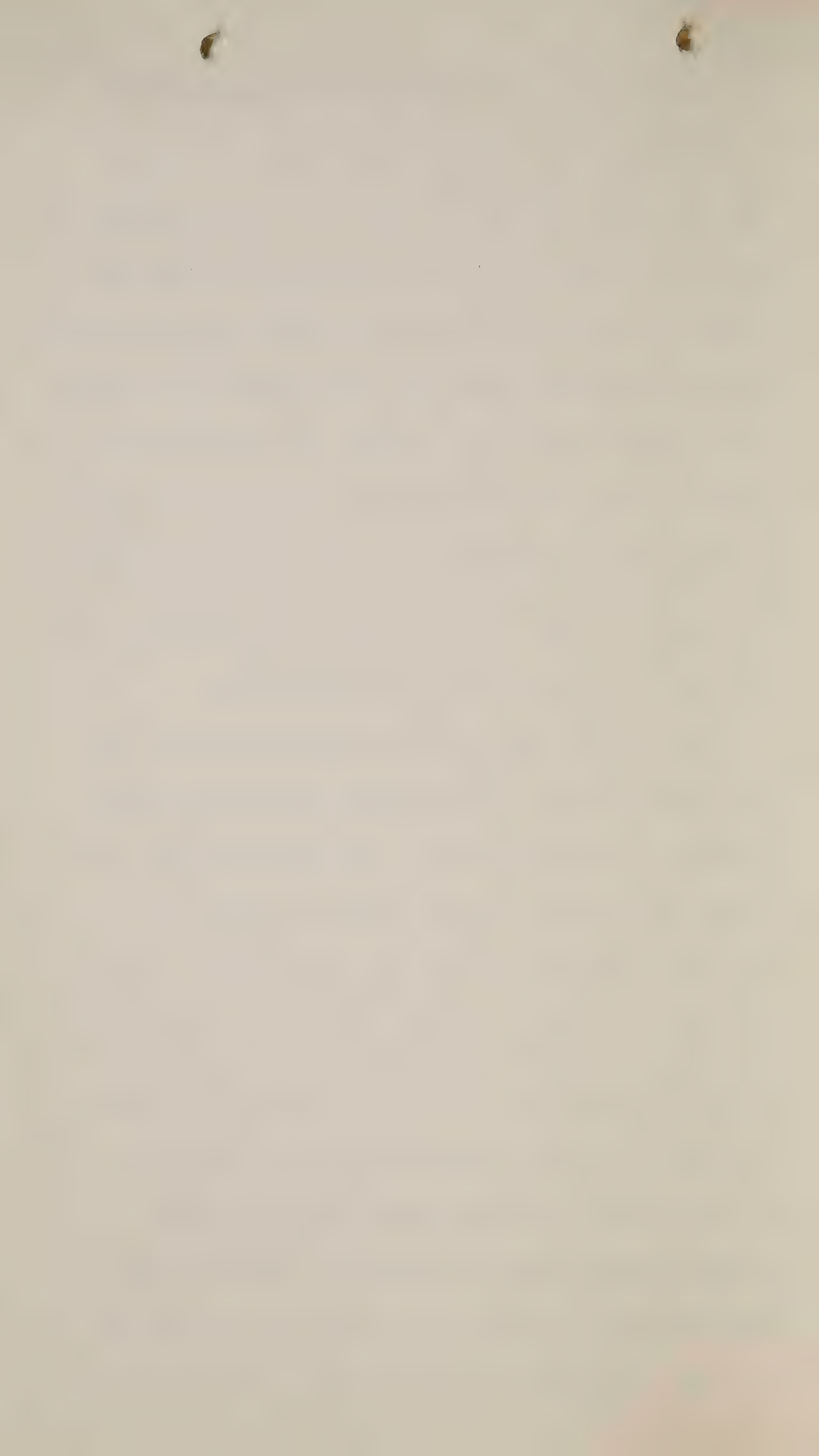
the plan, unless the court permits him to proceed in state court or grants other relief. See I Family Lawyer §8.103.

When secured creditors participate, the plan will normally provide for regular payments to creditors holding security which is valuable or essential to the debtor, e.g., automobiles. There is no statutory time limit for the liquidation of claims in an extension arrangement. However, it is customary to attempt to complete such plans within three years. An initial determination of whether the debtor will be discharged, although the plan is not completed, may be made at the end of the three year period. Bankruptcy Act §661, 11 USC §1061.

The attorney normally contacts creditors and solicits consents to the plan. If the majority in number and amount of unsecured creditors who have filed claims before the conclusion of the first meeting of creditors consent, all of the general creditors will be bound, irrespective of failure to consent. Bankruptcy Act §§652, 657, 11 USC §§1052, 1057. Unsecured creditors who fail to file timely claims will not be paid, and their debts will be discharged. Bankruptcy Act §57h, 11 USC §93(h); L.O. Koven & Brother, Inc. v

Steelworkers Local 5767 (DNJ 1966) 250 F Supp 810, 816.

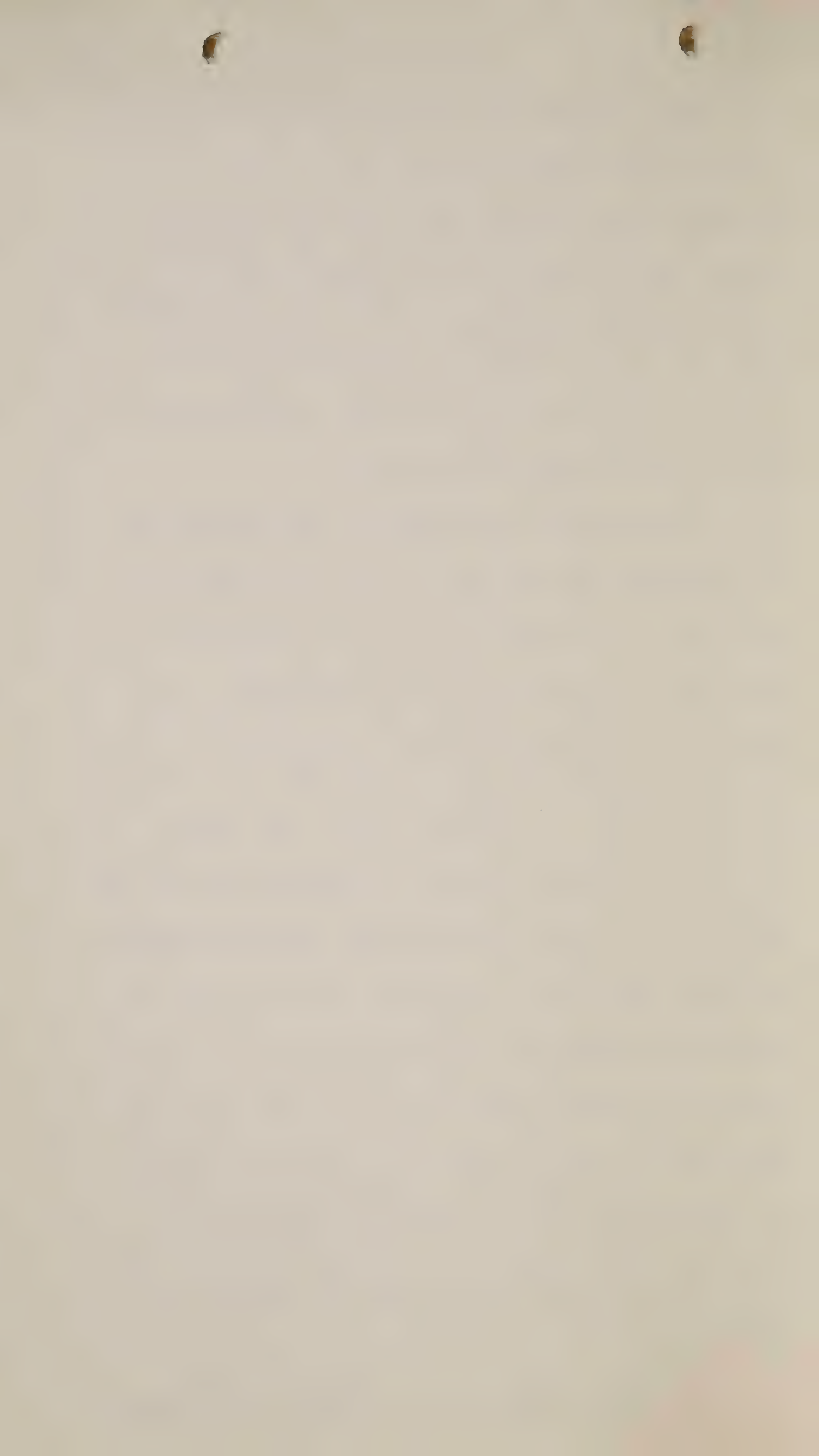
Secured creditors who consent to the plan will be bound thereby. Many secured creditors will consent to such plans, even



when reduced payments are called for, especially when their security is relatively valueless. The plan may include provisions under which the debtor may reject executory contracts, although such rejection constitutes breach of contract, and compels secured creditors to retake security, or limit liability on long-term leases. Bankruptcy Act §§642, 646(6), 11 USC §§1042, 1046(6).

If the bankruptcy court finds that the proposed plan is in the best interests of creditors, is feasible and in good faith, and that the debtor has not been guilty of acts which would be a bar to his discharge in bankruptcy (see §9.1.19), it will confirm the plan and appoint a trustee to administer it. Bankruptcy Act §656, 11 USC §1056. The court may direct the debtor's employer to remit his paycheck directly to the trustee, who will deduct the payments and return the balance to the debtor. In other cases, the debtor will be permitted to make his payments on a voluntary basis. Bankruptcy Act §611, 11 USC §1011. The debtor has every right to object to the validity of claims filed and may obtain speedy and fair trial in the bankruptcy court, relatively inexpensively. Bankruptcy Act §633(1), 11 USC §1043(1).

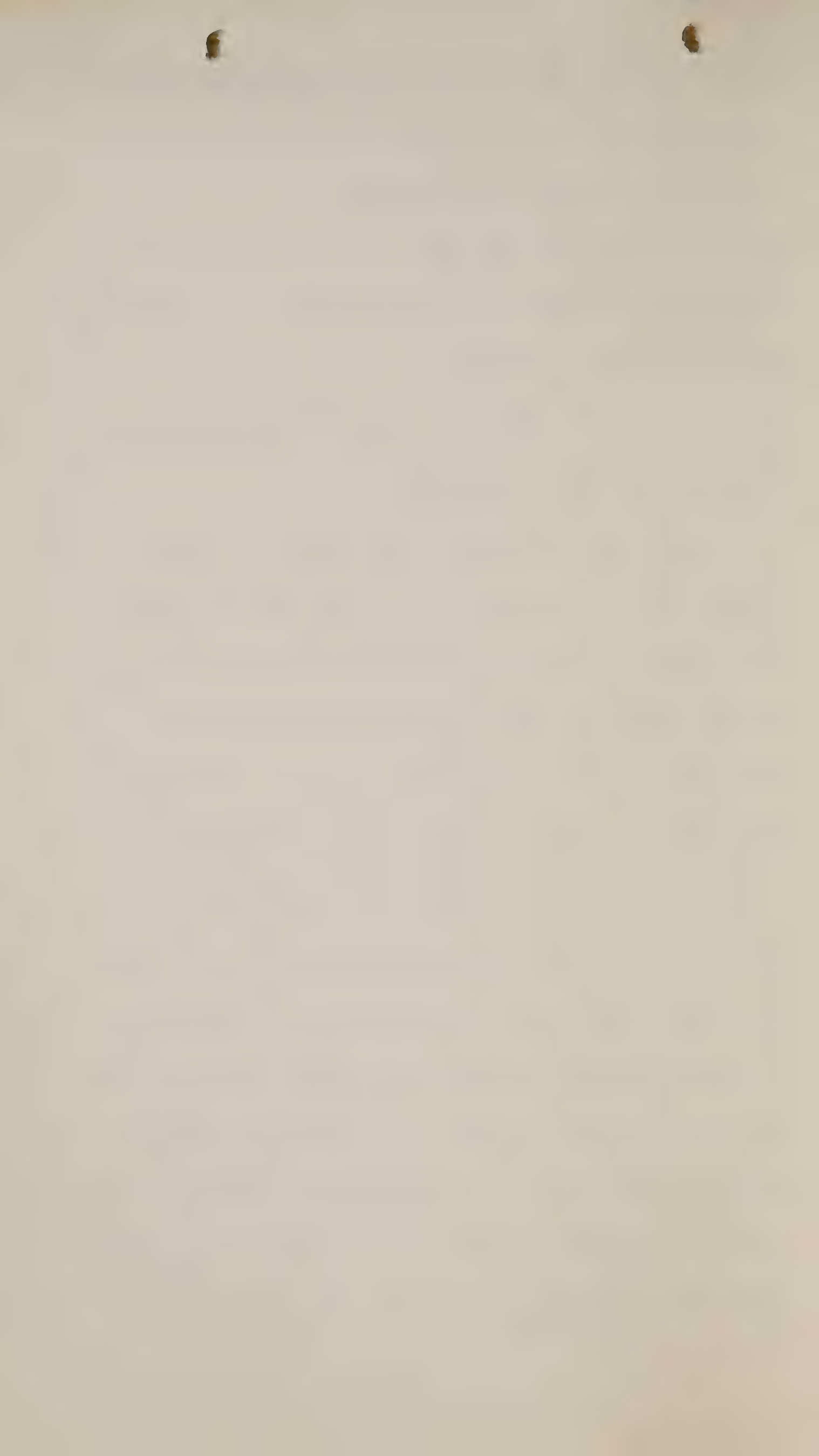
Upon successful completion of the plan, and in certain



situations when a plan has not been completed, the debtor will receive a discharge identical to that which he could receive in a straight bankruptcy proceeding. See Bankruptcy Act §§660, 661, 11 USC §§1060, 1061. He may in certain circumstances apply for dismissal of his proceedings or convert them into straight bankruptcy proceedings. However, he cannot be adjudicated bankrupt without his consent. Bankruptcy Act §666, 11 USC §1066.

Counsel should be aware of the situations in which Chapter XIII is very effective. In some cases the debtor is considering bankruptcy only because he needs relief from creditor pressures, and is afraid of jeopardizing his employment if wage attachments are levied. In other cases, for a number of reasons, bankruptcy may not be available to him. For example, if he received a discharge in bankruptcy in prior proceedings instituted within the past six years, he is not eligible for a discharge in bankruptcy in new proceedings. Bankruptcy Act §14c(5), 11 USC §32(c)(5). See §9.1.19. He may, however, file and confirm a Chapter XIII proceeding calling for an extension of time to pay his debts in full, notwithstanding Bankruptcy Act §14c(5), 11 USC §32(c)(5). Perry v Commerce Loan Co. (1966) 383 US 392,

Individual obligations may



not be dischargeable in bankruptcy (see §9.1.10). The debtor may have difficulty retaining his employment if he files bankruptcy, or he may be forced to pay some debts in spite of bankruptcy, or wish to do so (see §9.1.23). In other cases, the amount of unsecured indebtedness may be too small to justify loss of the right to a later discharge in bankruptcy if the need arises within the next six years. See Cowans §77.

There are few firm rules about when to recommend a wage earner plan. One factor that is always essential, however, is client's strong desire to pay his obligations, and willingness to submit to the discipline to accomplish this. Acceptance of this remedy has been far from universal. However, in appropriate cases, a wage earner plan will, in fact, aid materially in the financial rehabilitation of the debtor, and preserve his valuable right to a bankruptcy proceeding for a time of greater need.

See also I Family Lawyer §§8.76-8.109; Hilliard and Hurt, Wage Earner Plans Under Chapter XIII of the Bankruptcy Act (Nov. 1963); XIX The Business Lawyer 271 (1963); Cowans §§93-106. For further information as to practice in any given jurisdiction contact the local bankruptcy court clerk for the name of the local Chapter XIII trustee, who can furnish further information.



5. [§9.1.6] Bankruptcy

In most cases, the debtor may, by filing a voluntary petition in bankruptcy and surrendering for liquidation his nonexempt assets, obtain a discharge in bankruptcy which will provide him with a defense to actions filed against him by creditors whose claims are dischargeable in bankruptcy. There are situations in which bankruptcy will be the only effective and economical answer to a debtor's problems. Before deciding on this remedy, its probable ramifications should be carefully considered, and all other remedies thoroughly explored.

B. [§9.1.7] COLLECTING INFORMATION

Counsel cannot properly advise his insolvent client until he has at his disposal the facts necessary to determine his client's problems and rights. In the case of the non-business debtor, records are sparse and, often, the client has no clear picture of his own financial condition. Counsel is usually forced to elicit this information himself with attendant problems of time and economics. Temptations to shortcut this analytical process are always present, but shortcuts can result in disaster to the client and, in some cases, to counsel.

Many practitioners active in this field utilize questionnaires which they require the prospective client to complete prior to the initial attorney interview. An example



of an interview sheet is in §9.2.14. See also Cowans §1161. Such a questionnaire has multiple advantages. Not only does it compel the client to compile the necessary information, thus saving the attorney substantial clerical time, it serves as a checklist for counsel in interviewing the client and determining the appropriate remedy. Further, if proceedings under the Bankruptcy Act are indicated, such a form, once completed, can serve as a work sheet from which the necessary pleadings can be prepared.

As an alternative, counsel can request the client to bring in a list of all of his liabilities, and utilize the normal commercially-distributed bankruptcy form schedules and statement of affairs as a checklist. However, these forms probably will not yield all the information counsel should have.

Basically, the information essential to any analysis of a debtor situation concerns liabilities, assets, income, overhead expenses and debt service funds available, and certain specific factors relating solely to bankruptcy as a remedy. These factors are discussed below. See also Cowans chap 3 for discussion of these factors.

C. EVALUATING LIABILITY FACTORS

1. [§9.1.8] Compiling Information

The client must prepare a complete list of creditors prior



to his interview with the attorney. This should include disputed, contingent, and unliquidated debts, as well as other obligations. There is a real tendency for debtors not to inform counsel of certain creditors. This omission may result from embarrassment, or an intention to eventually repay the creditors. Creditors falling into this class include friends, relatives, employers, credit unions, family physicians, and sometimes even attorneys. Other creditors may be omitted through inadvertence, e.g., assignors of accounts, collection agencies, counsel for creditors when the counsel has been in contact with debtor, guarantors, cosigners, and the like. The debtor often will neglect to schedule governmental agencies, such as the Veteran's Administration, which may have guaranteed commercial loans, and taxing agencies. Counsel should not, therefore, rely solely on the list provided by debtor, but should specifically question him on the points. He should make clear to the debtor that, in the event that proceedings under the Bankruptcy Act are required, failure to properly schedule creditors could result not only in a failure to obtain a discharge from such debts, but might result in an accusation that such omission constituted a false oath in the proceedings. In such event, grounds might exist for an objection to the debtor's discharge under Section 14c(1) of the Bankruptcy

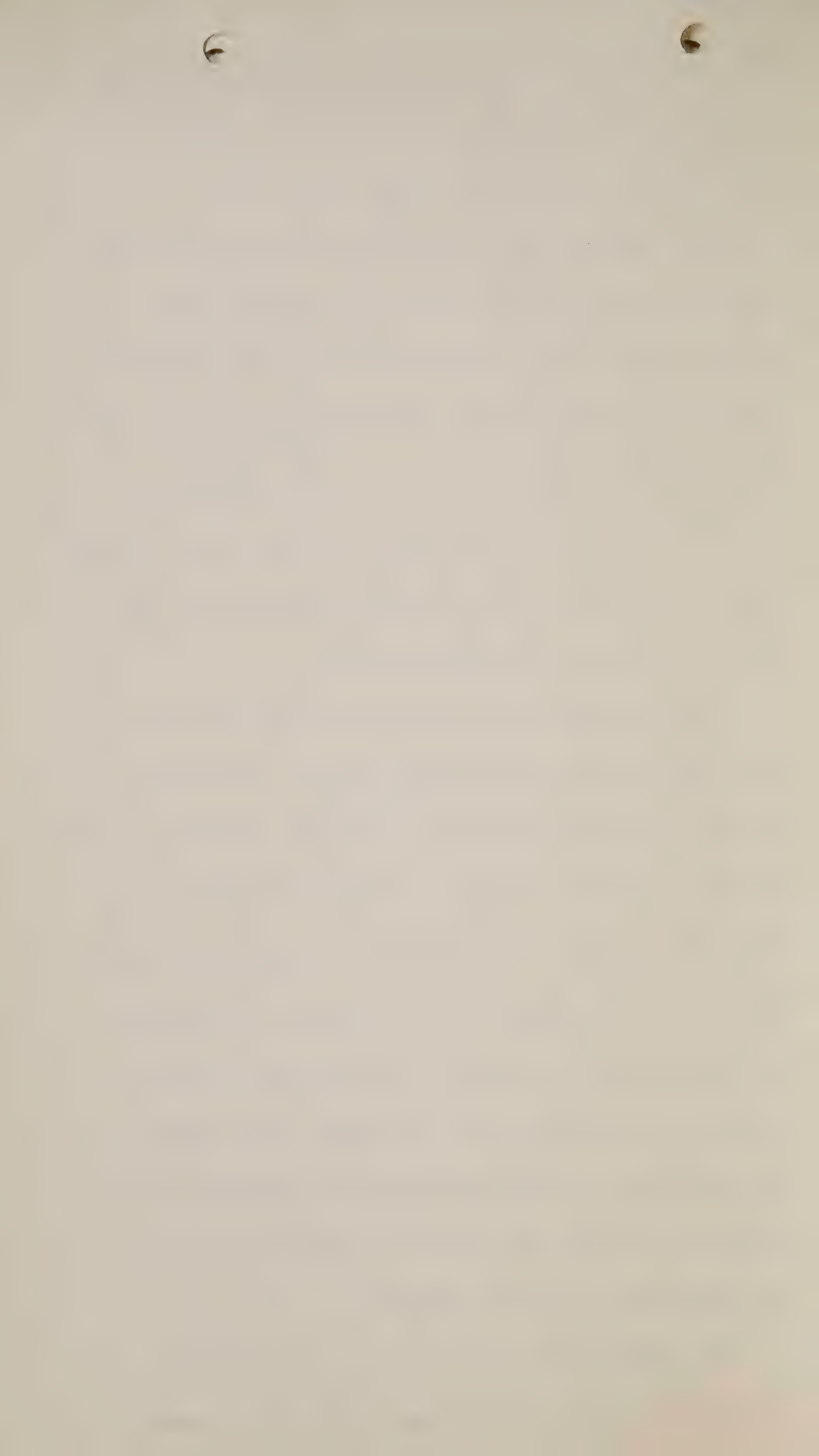


Act (11 USC §32(c)(1)) or other portions of Bankruptcy Act §14 (11 USC §32), and might also result in criminal sanctions under Title 18 USC §152. See Cowans chap 4; §9.1.19.

As a practical matter, even when obligations have been verbally forgiven, or the client believes that a claim against him will never be pursued, prudence dictates proper scheduling of such creditors. Friendly creditors have been known, with disturbing frequency, to assign accounts for collection either voluntarily or by operation of law, leaving debtors to contend with unsympathetic collectors, or bankruptcy or probate court administrators.

Counsel is well advised to see that such information is prepared by the debtor, in his own hand, if possible, to protect counsel against claims of negligent failure to schedule a claim of which he was aware. For the same reason, the questionnaire, worksheet or creditors' list should be retained by counsel. Some attorneys make a practice of personally examining the debtor's bills and payment books to verify amounts, names and addresses. Certainly counsel should scrutinize all complaints with which the client has been served and which he now possesses, to ascertain that all parties to such action are scheduled.

The creditors' list should contain all information required by the Supreme Court form Bankruptcy Schedules



and Statement of Affairs ^{8-9.4.10)} (§9.4./ with reference to date, consideration, validity of the claim, and last known address of the creditors. Some bankruptcy courts will require the inclusion of creditors' Zip Code. It may be wise to anticipate this requirement.

2. [§9.1.9] Validity of Claim

As indicated, it is necessary to ascertain the extent and number of all creditors, the size of the obligations, and the relationship in number and amount of secured to unsecured indebtedness. However, if a major obligation is, or may be, illegal or voidable under state law, this fact should be discussed with the client by counsel, in order to reach at least a preliminary determination as to the validity of a given claim. This is, of course, a question of state law, in most instances. If the chances of a successful challenge of the debt seem reasonable, it may be wise to attempt to negotiate or settle other obligations, and take the creditor to court on the disputed claim.

On the other hand, if the disputed obligation bears a small relationship to the total debt, one of the more drastic types of debt relief may still be necessary. The invalid claim may still be challenged if the occasion arises, e.g., if the creditor brings suit on the debt in state court after a bankruptcy discharge, claiming his obligation is nondis-



chargeable, the original invalidity of the claim can, of course, be raised.

3. [§9.1.10] Dischargeability in Bankruptcy

Although a bankruptcy proceeding may be successfully concluded and discharge entered, there are certain obligations that are not dischargeable in bankruptcy and to which a plea of discharge would not be a defense. In this event, the debtor must be counseled that he will eventually have to defend himself in state court litigation on the obligation, or settle, or otherwise resolve the matter. The greater the amount of such claims, the less advisable the bankruptcy remedy. If the eventual result of a bankruptcy will be a flood of litigation on most of the claims, it might be advisable to consider some sort of settlement proposal, or a wage earner's plan at the outset. If a wage earner's plan is filed, the debtor may still attack claims filed against him on the merits, although the issue of nondischargeability is of course moot. Those debts which are not dischargeable in bankruptcy are indicated in §§17 and 63 of the Bankruptcy Act (11 USC §§35, 103). They are categorized: (a) Debts not provable in bankruptcy and (b) Debts not dischargeable although provable.

a. [§9.1.11] Debts Not Provable in Bankruptcy

Section 63a of the Bankruptcy Act (11 USC §103) sets forth the debts which are provable in bankruptcy. If a debt



is not provable within the meaning of this section, it will not be discharged. Debts are provable in bankruptcy if they are founded upon:

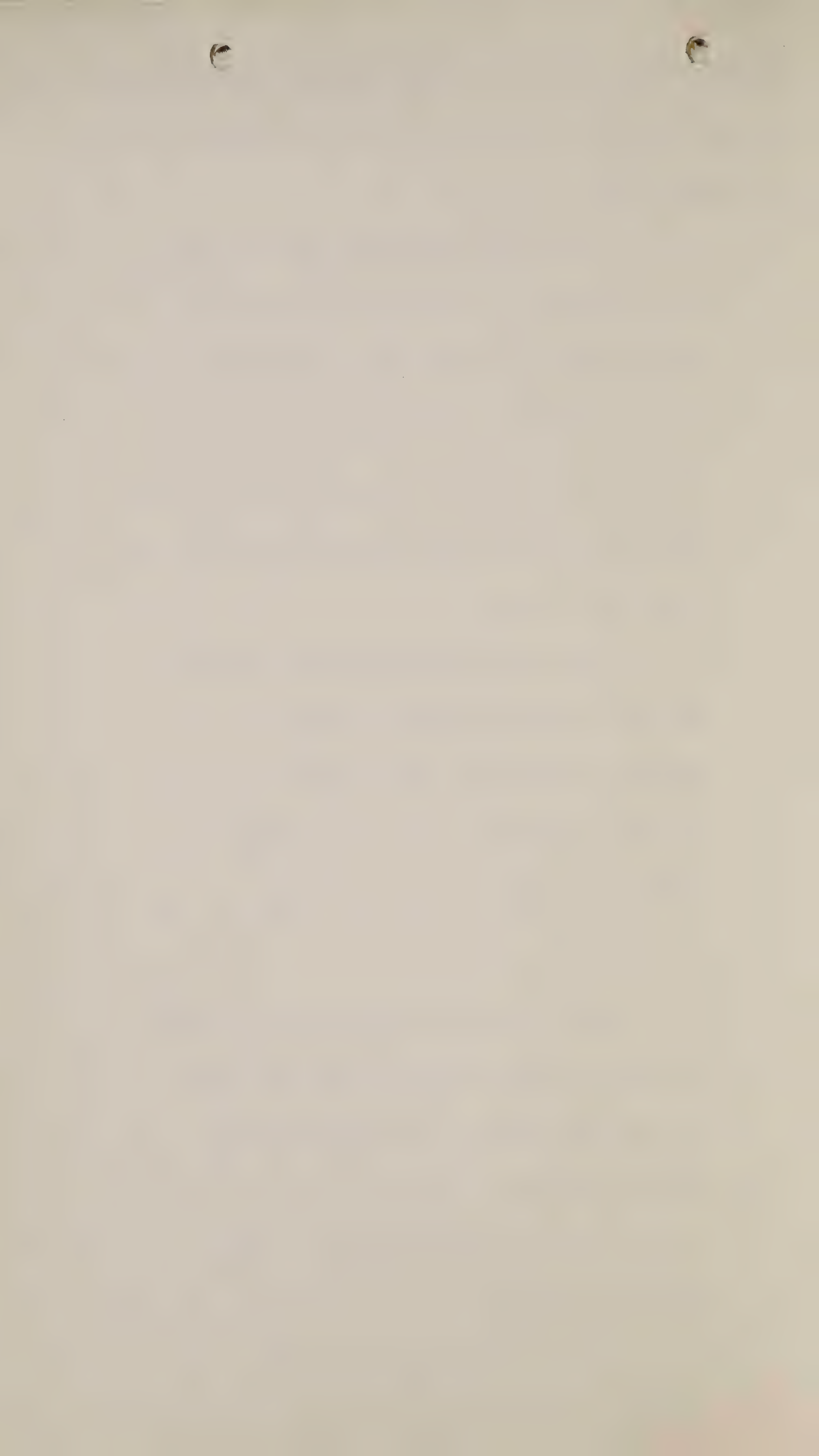
(1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the [bankruptcy] petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date . . . ;

(2) costs taxable against a bankrupt who was at the time of the filing of the petition by or against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice;

(3) a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a [provable] debt;

(4) an open account, or a contract express or implied;

(5) provable debts reduced to judgments after the filing of the petition



and before . . . discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments;

(6) an award of an industrial-accident commission, body, or officer of any State having jurisdiction to make awards of workmen's compensation in case of injury or death from injury, if such injury occurred prior to adjudication [in bankruptcy, which is contemporaneous with filing the petition in bankruptcy];

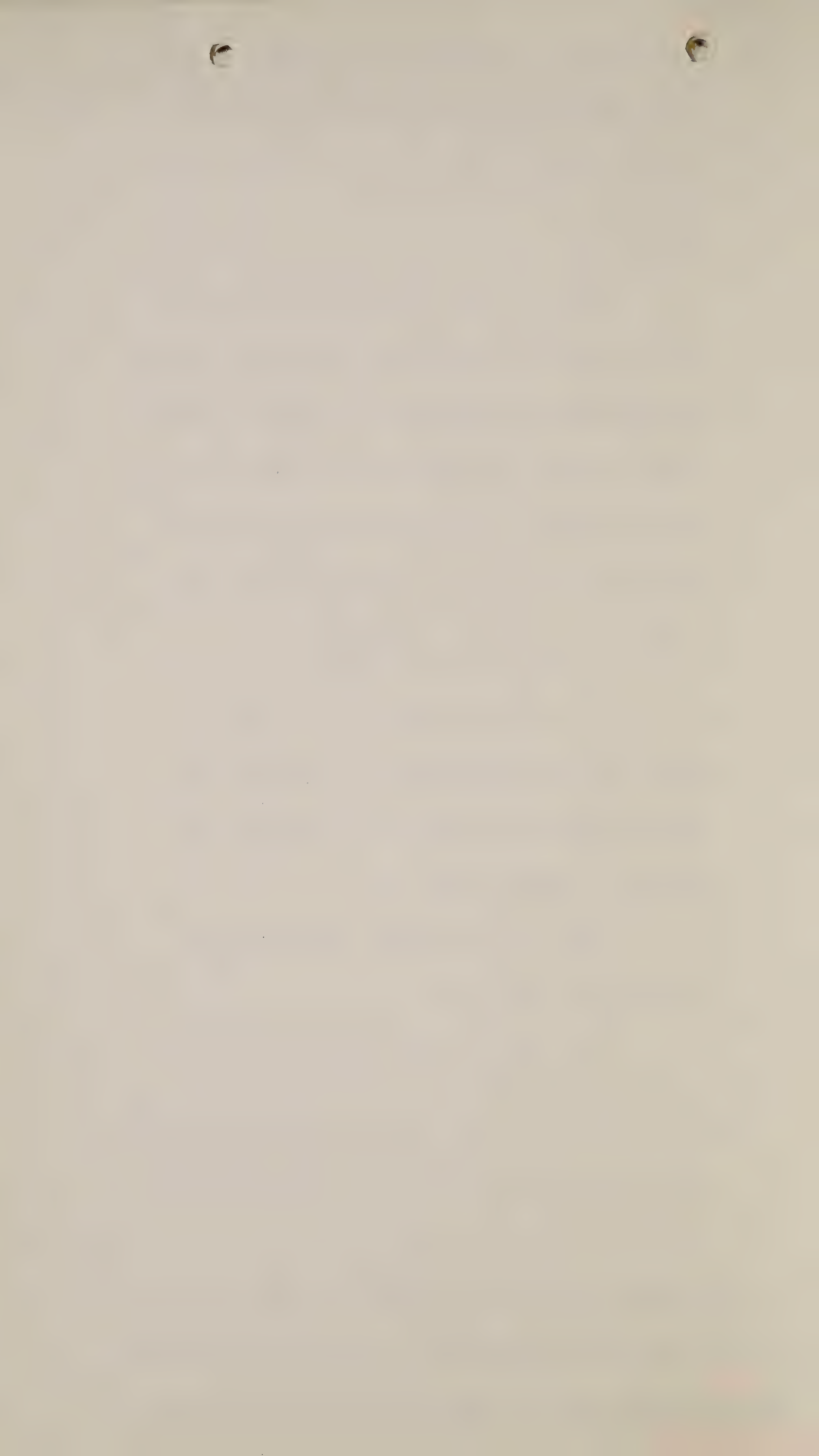
(7) the right to recover damages in any action for negligence instituted prior to and pending at the time of the filing of the petition in bankruptcy;

(8) contingent debts and contingent contractual liabilities; or

(9) claims for anticipatory breach of contracts, executory in whole or in part, including unexpired leases of real or personal property

. . . .

Bankruptcy Act §63 (11 USC §103) specifies, in addition, certain other classes of provable obligations not normally material to the insolvent nonbusiness debtor. Among these

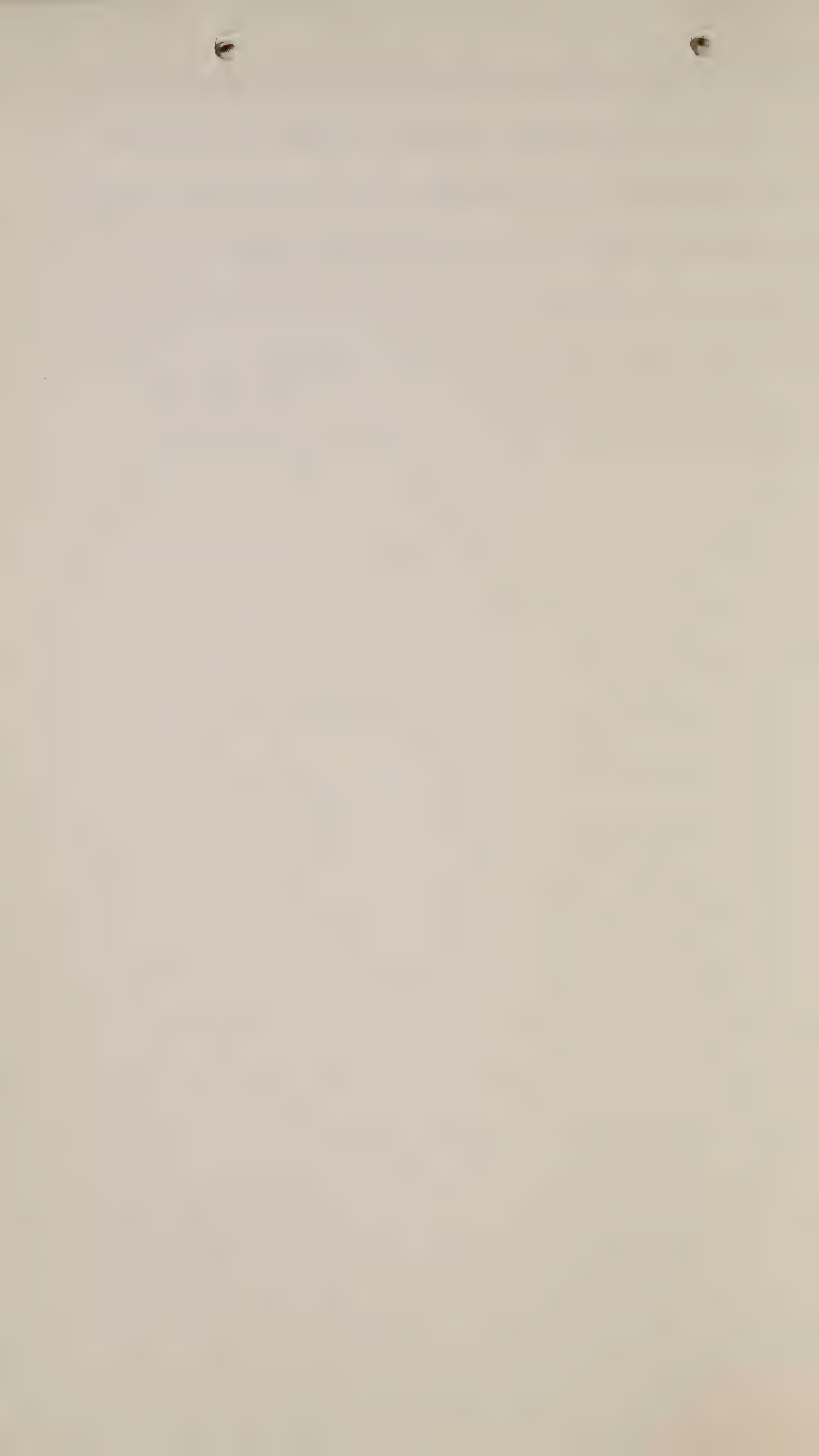


are debts arising from the rejection of an executory contract (which can occur in Chapter XIII proceedings or in bankruptcy), a rejection that is deemed breach of contract as of the date of the bankruptcy petition by Bankruptcy Act §63c (11 USC §103(c)). Bankruptcy Act §63d (11 USC §103(d)) provides that, where a contingent or unliquidated claim has been proved, but disallowed under Bankruptcy Act §57d (11 USC §93(d)), the claim is deemed not provable.

The most common problem arising under Bankruptcy Act §63 (11 USC §103) is that of the debtor who is faced with a negligence action. His normal reaction, if he is uninsured, is often to immediately consider bankruptcy. Counsel must ascertain if the action has, in fact, been filed, prior to filing a bankruptcy petition. If action has not been filed, the bankrupt will find himself with a nondischargeable negligence claim. If discharge is entered, and the non-dischargeable claim remains, the debtor will, since he is barred from obtaining another discharge for six years (see §9.1.19), be without recourse (except, perhaps, against his attorney for malpractice). Counsel should try to time his petition appropriately. Of course if a settlement is reached prior to bankruptcy and a written agreement executed evidencing the obligation, the claim would be provable under Bankruptcy Act §63a(1) (11 USC §103(a)(1)). Such an agreement, if made by



debtor in contemplation of bankruptcy, might be alleged to be nondischargeable under Bankruptcy Act §17a (11 USC §35(a)) as a fraudulent transfer (see §9.1.12). However, that section requires that money or property have been received by the debtor in consideration for the agreement, and it is arguable that such a debt is dischargeable. See 3 Collier on Bankruptcy (14th ed.) Par. 63.25, p. 1893.



[§9.1.12]
3. / Debts Not Dischargeable Though Provable
(Bankruptcy Act §17a, 11 USC §35(a))

A creditor may have a claim which is provable and allowable in bankruptcy, and upon which he can file a claim in a bankruptcy proceeding and share in dividends. To the extent unsatisfied, he will still be permitted to proceed against the bankrupt after discharge if the claim is one not discharged in bankruptcy, since discharge would not be a defense. The debts not affected by a discharge are specified in Bankruptcy Act §17a (11 USC § 35(a)) as follows:

(1) . . . taxes which became legally due and owing by the bankrupt to the United States or to any State or subdivision thereof within three years preceding bankruptcy

Comment: Note that by amendment in 1966 (80 Stat 271 (1966)) a three year statute of limitations was enacted on tax claims with certain very important exemptions spelled out in the balance of the section. Generally these exemptions relate to situations in which no returns were filed, or the returns filed were fraudulent, or unpaid withholding taxes are involved. Tax liens are not dischargeable. See Report of the Senate Committee on the Judiciary, May 12, 1966, pages 2, 3, and 4; House Report 687, 89th Cong. 1st Sess. for the legislative history of this amendment.



(2) . . . liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive, or for willful or malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; . . .

COMMENT: The false financial statement is one of the most frequently used leverage points whereby creditors seek to convince the bankrupt to reaffirm his indebtedness after bankruptcy. See Cowans §§448-452; §§9.4.54-9.4.57. Aside from the merits of a particular claim of nondischargeability, counsel should attempt to ascertain prior to bankruptcy the extent to which nondischargeability claims are likely to be made. This is to determine whether or not the expenses of defense of such actions may negate the value of the bankruptcy, or whether settlement after bankruptcy is likely. If expenses



will be great (which they may be in terms of lost work, etc., even in a legal aid situation), and there is probable merit to the claims of nondischargeability, counsel should advise the client of the relative merits of an arrangement with creditors. For discussion of the balance of the grounds specified in Bankruptcy Act §17a(2) (11 USC §35(a)(2)) see Cowans §§421-462. See also §§9.4.54-9.4.57.

Debts for alimony, maintenance, and support are nondischargeable. Bankruptcy Act § 17a(2), 11 USC §35(a)(2). Obligations arising from a property settlement agreement concerning division of property presently owned by the spouse, however, are dischargeable. Goggans v Osborne (9th Cir 1956) 237 F2d 186. While the rule seems clear, determination of the dischargeable character of such an agreement, whether or not incorporated into a divorce decree, is often a tricky question to be resolved at the time the plea of discharge is raised. Labelling is not determinative. Yarus v Yarush (1960) 179 CA2d 190, 3 CR 50. It may, however, be persuasive. See Aarons v Brasch (1964) 229 CA2d 197, 40 CR 153. Various factors important in this analysis are set forth in Cowans. §460. Generally, the authorities hold that the essential element in making a support obligation nondischargeable is a continuing obligation of a husband which will terminate when the need ceases, or upon remarriage. If the obligation will



not terminate upon death or remarriage, the obligation will likely be found to be a dischargeable settlement. See Loiseaux, Domestic Obligations in Bankruptcy, 37 Journal of the National Association of Referees in Bankruptcy, p. 68 (July 1963). Support awards in annulment proceedings, however, have been held to be dischargeable. Norris v Norris (9th Cir 1963) 324 F2d 826.

Attorneys fees awarded the wife are commonly considered nondischargeable. In re Brennen (ED NY 1941) 39 F Supp 1022. A similar treatment is accorded the wife's costs of suit. Smith v Smith (WD NY 1934) 7 F Supp 490.

A complex and unsettled problem arises as to payments required by the agreement or decree to be made to creditors of the community. If such an obligation exists, it might be enforced by execution and contempt proceedings. Cases split on holding such obligations dischargeable. See, e.g., Fife v Fife (1954) 1 Utah 2d 281, 265 P2d 642 (dischargeable, but this was an annulment proceeding). But see In re Gorski (WD NY 1938) 25 F Supp 551 (liability for mortgage payments on wife's property held nondischargeable support). Apparently the question is resolved upon the court's determination that the order is in the nature of alimony or support instead of a property settlement, with the analysis previously discussed. Goggans v Osborn (9th Cir 1956) 237 F2d 186. See also



Direct liability to third party creditors whose claims the husband has, in divorce proceedings been ordered to pay, constitutes a more difficult problem. The general rule seems to be that such debts are dischargeable against the creditors, except in those rare instances where the third party supplied necessary goods and services for wife or child, without the consent of bankrupt, under circumstances in which the law creates a duty of reimbursement. See Loiseaux, supra 72-75. Compare In re Ostrander (ED NY 1905) 139 F 592 (physician's bill discharged where H & W lived together at time debt incurred) with In re Meyers (WD NY 1926) 12 F2d 938 (liability to party who furnished care upon failure of husband to provide convalescent care for wife held nondischargeable).

The mere existence of a claim for necessities does not render the debt nondischargeable; and there are not many circumstances where the problem could arise. It appears that the federal courts are not inclined to expand nondischargeability in this area. See Cowans, §461.

§ 17a(3) . . . have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy;



COMMENT: See Cowans, §§463-471. A timely claim must be filed within six months from the first meeting of creditors subject only to delay provided for in the statute. Bankruptcy Act §57(n), 11 USC §93(n).

17a(4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity;

COMMENT: See Cowans, §§472-480.

17a(5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy . . .

17a(6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment.

D. EVALUATING SECURITY INTERESTS

1. [§9.1.13] Relationship of Secured Debt to Total Indebtedness

Debtors often succumb to the ever-present temptation to purchase property, not always necessities, "on time".

Normally the seller will retain security interests in the goods sold. Similarly, it is customary for finance companies and other agencies dealing in consumer loans to take property of the debtor as security for such loans. If the client is one whose major obligations are so secured, counsel must ascertain which of such debts will be relieved by a bankruptcy.



If the security is returned, the discharge in bankruptcy normally will be effective to protect the debtor from deficiency claims, if any exist under state law. Such obligations, of course, may be claimed nondischargeable for the grounds set forth at §9.1.12. above. If the debtor wants to retain the secured items and therefore reaffirm his indebtedness, bankruptcy will be of little use if these items encompass the great majority of debtor's obligations. See §9.5. as to post-bankruptcy dealings with secured creditors. The issue of secured obligation will often be the key factor upon which the decision to file a Chapter XIII proceeding instead of bankruptcy will be based.

It is important to decide whether the debtor can afford to continue making periodic installment payments on secured items. There is little sense in filing bankruptcy if secured indebtedness makes up the greater portion of the debtor's liabilities, and he cannot -- or will not -- return the items he cannot afford. If these obligations cannot be renegotiated to provide for smaller payments, then a voluntary return of such merchandise should probably be recommended, especially in situations where any deficiency claim is not permitted, such as where goods are purchased subject to the Unruh Act, CC §1812.5, or where a deficiency will be waived.



2. §9.1.14] Validity of Obligation and Security Interest

Counsel must know whether, and to what extent creditors have interests in property in the debtor's possession, and which security cannot be dispensed with or readily replaced. Examination of documentation is essential. In many cases, the debtor may be under the impression that an obligation is secured, when, in fact, it is not. This often occurs, for example, in connection with installment sales of certain encyclopedias.

In addition to the normal questions which arise in analysis of the formation of contracts, there are numerous statutes which the California attorney must bear in mind. The California Commercial Code provides that a security interest is not enforceable between the parties unless that interest "attaches". Com C §§9203(1)(b), 9204(1). "Attachment" in this context involves compliance with Com C §9203(1), basically a statute of frauds provision. "Attachment" should not be confused with "perfection" under the Commercial Code, which relates to the rights of other creditors to claim interests in the security as against the secured party. See California Commercial Law III (Cal CEB 1966) §§2.3-2.13.

In addition to compliance with the attachment requirements of the Commercial Code, there are various California statutes affecting consumer transactions which apply in



admission to the Commercial Code: The Unruh Detail Installment Sales Act (CC §§1801-1812.10), Rees-Levering Automobile Sales Finance Act (CC §§2981-2984.3 and Veh C §11713). See also the Industrial Loan Law (Fin C §§18000 et seq.) and California Small Loan Law (Fin C §§24000 et seq.). See generally 1 Family Lawyer (Cal CEB 1961) §§8.5-8.47 and Chapter 4 of this volume.

3. [§9.1.15] Waiver of Security by the Creditor

Particularly where security is of nominal value (e.g., certain household furniture and furnishings), the secured creditor may forego his right to repossess. In other cases, he may have waived his right to the security by electing to sue the debtor for the price. See Comment, 7 UCLA L. Rev. 707-710 and cases cited. This principle has been incorporated in the Unruh Act (CC §1812.2), 7 UCLA L. Rev. 717. Further, waiver may be found if the creditor has filed a declaration for attachment in the manner provided by the Official Forms to CCP §538, which require allegations that the creditor has no security for the obligation sued upon. In insolvency planning, it may be well to hold off initiation of bankruptcy proceedings if such a suit appears imminent. If the security is such as would be exempt in bankruptcy (see exemption checklist §9.3.13), the creditor, by attaching, might well have lost his right to repossess and the assets attached can be freed of the attachment lien



under BA §67a. 11 USC §107(a). See §9.4.3 procedures to release attachment.

4. [§9.1.16] After-Acquired Security

Until the enactment of the California Commercial Code there was no question that it was permissible for a creditor to receive a security interest in property of debtor then in his possession or subsequently acquired by him. See California Commercial Law: III §2.31 (Cal CEB 1966). The Commercial Code limits this interest by forbidding attachment of after-acquired security interests to consumer goods other than accessions or replacements. Com C §9204(4)(b). However the Commercial Code is, in this area, subordinate to the provisions of the Unruh and Rees-Levering Acts. Com C §9203(2). Further limitations imposed by these statutes are discussed in 3 Cal. Comm. Law, §2.42 (Cal CEB 1966). An installment seller in an Unruh Act transaction cannot take a security interest in other goods already paid for by the buyer. CCP §1804(3). Further, the Unruh Act §1804(3) appears to limit after-acquired security clauses to goods later acquired from the seller. There is a similar provision in the Rees-Levering Act as to motor vehicles. CC §2984.2. "Accessions" are discussed in 3 California Commercial Law §2.43 (Cal CEB 1966) and liens on "replacements" at §2.44. The extent to which a debtor may find himself losing possessions he had no idea were subject to security



interests is another factor in determining whether bankruptcy is an appropriate remedy.

An additional problem arises where the debtor has disposed of security in a manner contrary to state law. He may be subject to criminal sanctions. Pen C §§531, 531a.

5. [§9.1.17] Statutory Liens

Counsel should investigate into the extent and validity of liens arising under state law, e.g., artisan's liens for repair of personal property, mechanics or materialmen's liens on real property, and particularly attachment or execution liens upon the property of debtor, including his wages. In the event of judicial liens, a proceeding in bankruptcy or Chapter XIII may be indicated for the purpose of invalidating the liens under Section 67a of the Bankruptcy Act, 11 USC §107(a)(1), providing that the requirements of that section can be met. See §§9.4.29-9.4.35. Further, if an attachment lien has been imposed on real estate where the debtor resides, he can file a Declaration of Homestead which will preserve a certain amount of equity if recorded prior to the recordation of an abstract of judgment.

Beaton v Reid (1896) 111 C 484, 44 P 167. See §9.3.29-9.3.32 for discussion of homestead.

6. [§9.1.18] Equitable Liens

Counsel will notice, from time to time, that debtors have entered into contracts, often for home improvements,



of payments to creditors which result in substantial lowering of his standard of living. See Cowans, §§57-58.

There are debtors who will insist that bankruptcy is only desirable for the purpose of forestalling creditors and that eventually all debts will be paid. Experience has shown that great difficulties can arise in these cases where such repayment is beyond the debtor's actual means; or where later illnesses or other financial reverses cause financial disaster after the accounts have been reaffirmed. With such debtors, a wage earner's plan may be indicated. Some debtors will frankly state, or it may be clear to the attorney, that their problems are due to improvidence and lack of mature economic judgment. In such a situation, a wage earner plan may be indicated, if feasible, to enable the debtor to avoid real or imagined humiliation. It is also true that by submitting himself to the necessary discipline, he may correct some of his defects in judgment and lack of sales resistance.

Another psychological factor which motivates debtors is fear of the court appearance required under the Bankruptcy Act. Counsel should make every effort to explain to the debtor exactly what will transpire to ease fears that an angry inquisition will occur at the first meeting of creditors; since this is not the normal situation in the case of non-business bankrupts. See Cowans §881. See §§9.4.4 39-9.4.41



containing covenants against conveyance by a debtor of the property and purporting to assign rents to the creditor involved. It has been held that such provisions may justify an action to enforce an equitable lien on real property of a debtor. Coast Bank v Minderhout (1964) 61 C2d 311, 38 CR 505.

If counsel determines that such an equitable lien may exist, he must evaluate the possibilities of raising equitable defenses, such as laches, fraud, unclean hands, etc. If he feels the lien cannot be challenged and the lien holder is a major creditor, he should probably seek a solution other than bankruptcy.

E. [§9.1.19] EVALUATING FACTORS WHICH MAY CAUSE DENIAL OF DISCHARGE (BA §14c)

In certain circumstances, a bankrupt may be denied a discharge in bankruptcy, which will render him vulnerable to all of his creditors. This situation should be distinguished from the situation, discussed in §§9.1.10-9.1.12 where a discharge is entered, but certain creditors may proceed on individual debts which may not be discharged by bankruptcy. The grounds for denial of a bankrupt's discharge are set out at Section 14c of the Bankruptcy Act. 11 USC §32(c). Discharge may be denied if the Bankruptcy Court is satisfied that Bankrupt has:

14c(1) committed an offense punishable by imprisonment as provided under Section 152a, Title



18; relating to false oaths, concealment and transfers or .

14c(2) destroyed, mutilated, falsified, concealed, or failed to keep or preserve books of account or records, from which his financial condition and business transactions might be ascertained, unless the court deems such acts or failure to have been justified under all the circumstances of the case.

COMMENT: For discussion of the types of persons who have been held required to keep books, and the applicability of this section to salaried persons, see Cowans, 204.

14c(3) while engaged in business as a sole proprietor, partnership, or as an executive of a corporation, obtained for such business money or property on credit or as an extension or renewal of credit by making or publishing or causing to be made or published in any manner whatsoever a materially false statement in writing respecting his financial condition or the financial condition of such partnership or corporation.

COMMENT: The non-business debtor need not be concerned with this provision, but note that any person who commits such acts may create as to the person harmed an obligation which will not be discharged in bankruptcy. See 9.1.10-9.1.12.



14c(4) at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed or concealed, any of his property, with intent to hinder, delay, or defraud his creditors.

COMMENT: There is a tendency on the part of hard-pressed debtors to transfer possession or title to assets to relatives or friends, without adequate consideration, for the purpose of preventing or forestalling execution thereon. Not only are such transfers often voidable in bankruptcy, BA §67d , but counsel will be faced with the problem, if bankruptcy is otherwise indicated, of possible objections to discharge. As Referee Cowans points out, undoing the transfer and recovering the property transferred does not, technically, cure the wrong. Cowans, §227. However, counsel should consider the possibility of undoing the transfer if only for the reason that there will be little motivation for creditors or the trustee in bankruptcy to make an issue of such transfers if the bankrupt has recovered the property.

14c(5) in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy has been granted a discharge, or had a composition or



an arrangement by way of composition of wage

earner's plan by way of composition confirmed

under this title . . .

COMMENT: Note that a prior Chapter XIII or other debtor rehabilitative proceeding under the Bankruptcy Act by way of extension, will not bar the discharge in bankruptcy.

Barnes v Maley (7th Cir 1966) F2d . The further question whether a dismissal of a prior Chapter XIII extension prior to completion of the proposed Plan will render certain debts scheduled therein nondischargeable under the principle of res judicata is apparently open. See Cowans §237. In any case where a prior bankruptcy exists counsel should verify the filing date either by personal examination of documents or by inquiry to the Bankruptcy Court clerk where the previous bankruptcy was filed.

14c(6) in the course of a proceeding under this title refused to obey any lawful order of, or to answer any material question approved by, the Court . . .

COMMENT: A serious problem arises where, in the opinion of counsel, debtor has committed some possibly criminal act, about which he may be questioned at the First Meeting of Creditors or subsequent examination. He cannot refuse to verify bankruptcy schedules from which incriminating information can be obtained. 1 Collier §7.13. Counsel should



understand that if the debtor refuses to testify based upon a privilege against self-incrimination, he may be subject to an objection to his discharge upon this ground. See Cowans, §245. His testimony, however, may not be used against him in criminal proceedings. Bankruptcy Act §7a(10), 11 USC §25.

14c(7) has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities, . . .

Section 14e, 11 USC §32(e) provides that bankrupt shall be deemed to have waived his right to a discharge if he fails to appear without sufficient excuse or to submit himself to examination at the first meeting of creditors or any other meeting specially called for his examination. Further, a similar result will follow if he fails to appear or submit to examination upon objections to his discharge. Counsel must seek, to the best of his ability, to insure that the debtor understands this. If the debtor has a history of irresponsibility and contemptuous attitude toward the courts in general, counsel may wish to protect himself by advising bankrupt of this requirement in writing. In extreme cases, bankruptcy might wisely be avoided. A similar problem arises in connection with the filing of a petition without prepaid filing fees upon pauper's oath. If the case is dismissed for failure to pay the requisite fee, a later



d. Discharge of scheduled obligations may be barred by the doctrine of res judicata. See Cowans §237. Technically, there may also be grounds for objection to discharge under BA §14c(6), 11 USC §32(c)(6), based upon failure to comply with the court's order respecting pauper's oath payments. Such a contingency, however, is unlikely since dismissal will effectively terminate the proceedings.

E. OTHER FACTORS

1. [9.1.20] Amounts Available for Liquidation of Indebtedness

Counsel should obtain from debtor information as to his take-home income per month. From this should be deducted debtor's necessary overhead expenses and a reasonable contingency reserve. The remainder should be the amount available for distribution to creditors. A form for such an analysis follows:

<u>BUDGET</u>			
<u>Monthly Expenses</u>	<u>Per Month</u>	<u>Income</u>	<u>Per Month</u>
Rent (or house payments)	\$ _____	Take Home Wages	\$ _____
Utilities	\$ _____	Take Home by Spouse	\$ _____
Groceries	\$ _____	Other Income	\$ _____
Clothing & Laundry	\$ _____	TOTAL INCOME	\$ _____
Transportation	\$ _____	TOTAL EXPENSES	\$ _____
Insurance	\$ _____	AVAILABLE FOR CREDITORS	\$ _____



Alimony or Child
Support

\$ _____

How are you paid?
(Check One)

Miscellaneous

\$ _____

Every week _____

Other _____

\$ _____

Twice a month _____

Every other week _____

TOTAL EXPENSES

\$ _____

Once a month _____

See also §9.2. 14, Page _____, for a more detailed budget. Counsel should then calculate the amount required to make monthly payments to creditors secured by interests in personal property.

Analysis of this information will indicate readily whether debtor has any hope of paying off his creditors.

If funds available for debt service do not exceed the amounts due secured creditors on a monthly basis, counsel should decide with his client which secured items may be dispensed with by debtor, and which creditors would likely accept reduced payments. If sufficient funds do not exist to liquidate all indebtedness within approximately three years, there is little sense in proposing an arrangement with creditors unless bankruptcy is not available to the debtor for one or more of the reasons specified.

In most cases, where sufficient money is available to pay off indebtedness within a reasonable time, creditors holding securities which are of little value will go along with reduced payments, e.g., holders of security interests in household furnishings. In many cases, their security



interests are intended largely as a psychological hold on the bankrupt and good business sense should dictate a policy of reasonableness if sufficient safeguards are provided for their benefit.

Even if he thinks bankruptcy is indicated, counsel must ascertain whether there will be sufficient funds on hand to pay for those secured items which debtor will wish to retain. If not, the debtor must then determine which secured items he will be prepared to return after bankruptcy, which he will reaffirm indebtedness upon, and with which creditors there is a likelihood of renegotiation, by reduction of payments or balance, or both, to an amount approximating what the secured creditors would realize upon resale of repossessed merchandise. A bankruptcy may even be detrimental if, thereafter, the debtor is still saddled with secured obligations beyond his means to pay.

2. [§ 9.1.21] Debtor's Assets

Counsel must be fully aware of all assets of the debtor. This is another area in which an interview sheet, such as that in § 9.2.14, is invaluable. Not only can use be made of asset information in negotiating with creditors, but no determination to file bankruptcy proceedings can be made until the attorney analyzes which assets will be taken into custody of the trustee in bankruptcy and liquidated to satisfy indebtedness of the debtor. Further, counsel will,



a. At this stage, need to advise the debtor of making maximum use of his permissible exemption rights under state law and on the extent to which non-exempt assets can be converted into exempt form. See §9.3.14-9.3.20 and 1 Family Lawyer §8.55 et seq. (Cal CEB 1961).

Assets subject to bankruptcy administration are covered by Bankruptcy Act §70a, 11 USC §110, and discussed fully at §9.3.1-9.3.5, and Cowans, Chapter 7. There are certain assets of this nature for which counsel must be particularly alert. Such assets include income tax refunds (see §9.3.43), commissions due or which may arise after bankruptcy from renewals on commission sales prior to bankruptcy (e.g., insurance sales commissions), causes of action, pension rights, and the like. Counsel should be particularly cautious where the debtor has a possible cause of action against another for negligence. If a proceeding under the bankruptcy act is filed prior to the filing of such negligence action, it will not pass to the trustee in bankruptcy and the benefits thereof may be preserved for the debtor. In re Farris (SD Cal 1963) 224 F Supp 497, aff'd sub nom. Carmona v Robinson (9th Cir 1964) 336 F2d 518. See §9.3.50. If it is possible that property will vest in the debtor by bequest, devise or inheritance within six months subsequent to filing, it might be prudent to suggest that any such wills be changed (perhaps by inclusion of a spendthrift trust) to



aid the operation of BA § 70a(5), 11 USC § 110(a)(5).

It is also important to analyze which assets subject to encumbrances have realizable equity that may fall to the trustee, so that this equity can be converted to exempt status (see §9.3.14), or if such conversion is not possible, so that the determination can be made whether or not to file despite the loss of this equity to the bankruptcy estate.

Another precaution is to recommend that the debtor remove any funds he may have on deposit with a savings institution to which he is indebted, to avoid seizure of such funds by the bank under their right of offset.

3. [§ 9.1.22] Employer Relationships

The debtor's relationship with his employer must be considered. In most cases, especially where wage attachments have been threatened or levied, the filing of bankruptcy proceedings may be welcomed by an employer if it results in a cessation of annoyance to the employer. There are, however, certain types of employment, particularly where the employee is required to be bonded as a condition of employment, where bankruptcy may present problems. Counsel should check with the employer and other concerned agencies, such as bonding companies and licensing boards, if such a problem appears possible. This is particularly true in the case of insurance agents, police officers, bank employees, court attaches, and the like. See Cowans §63. As to civil service



e employees see Cowans, §64; as to military personnel see Cowans, §65.

4. [§9.1.23] Legally Dischargeable Debts Bankrupt Will Pay Despite Bankruptcy (i.e., Actually Nondischargeable Debts)

Bankrupts may, of course, reaffirm obligations after the filing of a bankruptcy. In many cases they will do this out of a feeling that there is a moral obligation to a creditor, often a relative, friend, or one whose credit they desire to retain in the future. Counsel may ascertain how many of these debts exist in each case. If they are an appreciable percentage of the total indebtedness, discharge in bankruptcy will be useless or worse. This is especially true where the debtor cannot afford to make these payments, and where, as a result of filing bankruptcy, he may not obtain another discharge for six years.

A second category of actually nondischargeable debts are those enforceable against a bankrupt, notwithstanding the fact that they are legally dischargeable in bankruptcy and that the bankrupt obtained his discharge. This is true, for example, where a debtor, while uninsured, is involved in a motor vehicle accident of a type resulting in the suspension or revocation of his driving privileges under state law unless he pays damages. See Veh C Division 7; especially Veh C §16372. It has been held that such statutes create enforceable obligations despite discharge of the underlying



dot in bankruptcy on the theory that such statutes do not conflict with the protection of the Bankruptcy Act, but fall within the police powers of the states. Kesler v Department of Public Safety, etc., State of Utah (1962)

369 US 153.

5. [§ 9.1.24] Psychological Considerations

The psychological considerations involved in determining the choice of remedy are discussed in Cowans, § 57. Counsel is charged with the responsibility of educating the client as to his legal rights, and giving him the benefit of his experience as to the practical effects of the relief decided upon. It is important to clear up the debtor's misconceptions about bankruptcy and the other related remedies. One such misconception is that bankruptcy will destroy his credit. As a generalization this is probably, and perhaps unfortunately, incorrect. See Cowans, §§ 57-58. Another common belief is that there is a moral stigma attached to bankruptcy. Again there is some doubt as to the existence of such a stigma, but it is the conscience of the individual debtor that is important. Just as there are those who are not troubled by such matters, there are others for whom bankruptcy will be highly traumatic. Counsel should try to explain to the debtor the theory of debtor rehabilitation which underlies the Bankruptcy Act, and the importance to his family of freedom from harassment and privation because



6. [§9.1.25] Eligibility of Debtor for Bankruptcy Act Relief

The Bankruptcy Act specifies those persons who are eligible for relief thereunder. See Bankruptcy Act §§4-5, 11 USC §§22-23. Cowans discusses the capacity of aliens, minors, Indians, incompetents, and others in whose cases problems may arise. See Cowans §§41 et seq.

7. Domestic Relations Considerations

a. [§9.1.26] Should the Wife File?

One problem which should occur to counsel who determines that some sort of bankruptcy proceeding is advisable is whether or not the debtor's spouse should file as well. If so, she must file a separate petition. If she has no attachable assets and a wage earner's plan is proposed, there is little sense in filing for her; in fact, she would not be eligible for such relief under Bankruptcy Act §606(8), 11 USC §1006(8), if unemployed. If a bankruptcy is contemplated however, it is necessary to consider the benefit to the petitioner and his family of filing for both spouses. Unless the spouse has assets which cannot be converted into exempt form and which would hence be lost in bankruptcy, bankruptcy may be an inexpensive and wise solution.

The question of the wife's liability upon debts as to which the husband has been discharged is a matter of state law.



Hamaker v Heffron (9th Cir 1945) 148 F2d 981, cert den 326 US 737. Of course, if the wife is a co-debtor on the obligation, the discharge of her husband does not release her under state law. Lane v McAlpine (1931) 115 CA 607, 2 P2d 184. Neither can a judgment rendered against the wife prior to the husband's bankruptcy be collaterally attacked on the basis that it was not her debt. Kirkpatrick v Harvey (1942) 51 CA2d 170, 124 P2d 367. There is a presumption, however, that the wife obtaining services or supplies on the husband's credit is acting as agent of the husband. Chaffee v Browne (1895) 109 C 211, 411 P 1028.

A distinction is drawn in Civil Code §171 between the liability of the wife's separate property for necessities and nonnecessaries. The separate property of the wife, to a limited extent, is liable for necessities. See CC §§163.5, 169, 171, and CCP §1811.

However, the creditor of the husband is unlikely to draw fine distinctions between necessities and nonnecessaries, and separate property of the spouse subject to debts and that not so obligated. The spouse may still be harassed by creditors, and can of course be sued by them. When default judgments are taken against her, it is a difficult and often time-consuming matter to quash execution against assets not subject to the debt. Further, abstracts of judgment once

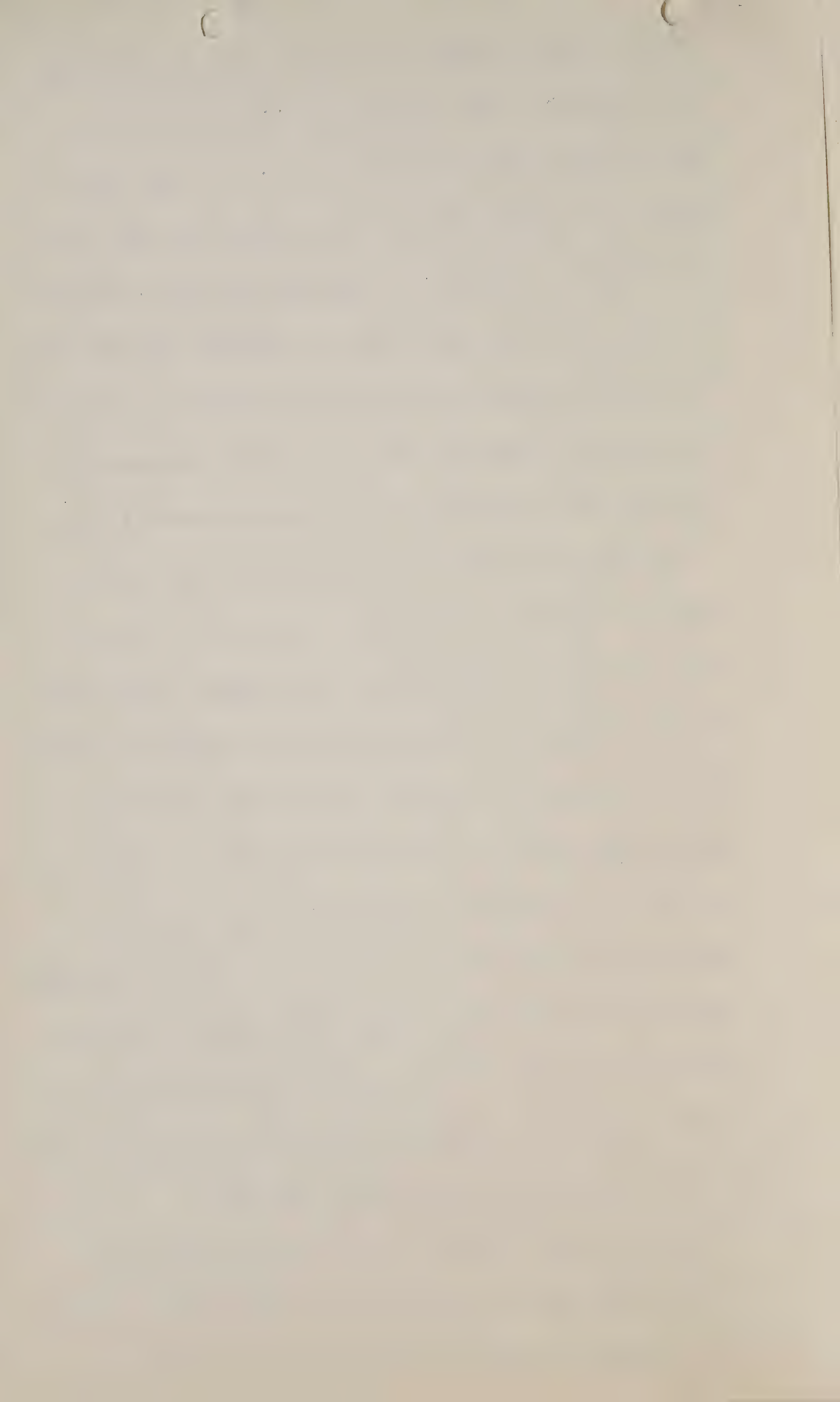


recorded will constitute real property liens in the county where recorded if the wife acquires an interest in real property within the ten-year period provided. CCP §674.

Often it is advisable to avoid these problems at the outset. If the spouse is and will be judgment-proof there is no need to file. See Cowans §725. However, experience has shown that there are few people who do not hope to better their economic station, and foresight at the time of filing the bankruptcy may avoid much difficulty at a later and more solvent date.

All community property is subject to the debts of the community creditors. Cowans §727. In the normal marital situation, the community property of the spouses which is not otherwise exempt will be administered in the bankruptcy of the husband, whether or not the wife files bankruptcy herself. Hannah v Swift (9th Cir 1932) 61 F2d 307. Whether or not property is in the nature of community property or joint tenancy property is a question of fact. If it is not community property, the wife's interest will not be subject to administration in bankruptcy. Cowans §727. As to the factors involved in proof of the status of title, see "Community Property in Joint Tenancy Form" 14 Stanford L. Rev. 87.

A problem will arise where nonexempt property is transferred to the spouse of bankrupt prior to bankruptcy. In some cases, the transfer will be made with actual or constructive



intent to hinder, delay, or defraud creditors. It will rarely succeed. Such transfers can be readily discovered and avoided, and can result in denial of discharge and possible criminal sanctions. See Cowans §724. If such transfers have been made, it might be advisable to attempt to recover the property before bankruptcy. This will not technically cure the evil of the transfer but may well persuade creditors or the trustee in bankruptcy to avoid making an issue of it.

b. [§9.1.27] Where Bankrupt is a Party to a Present or Pending Divorce

Bankruptcy may be particularly advantageous in the event of divorce, especially in cases where there are insufficient nonexempt assets to satisfy community creditors and there is insufficient money to pay the community debts and satisfy the husband's support obligations. In certain cases, where the bulk of obligations which the husband would normally be required to assume are debts for property which the wife will retain after the divorce and which the husband is ordered to pay as part of his obligation of support and maintenance, a wage earner's plan may be advisable. As to the dischargeability of such obligations, see §9.1.10.

Transfers in conjunction with divorce proceedings are not immune from attack by the husband's trustee in bankruptcy. At least this is so to the extent that the value of the property



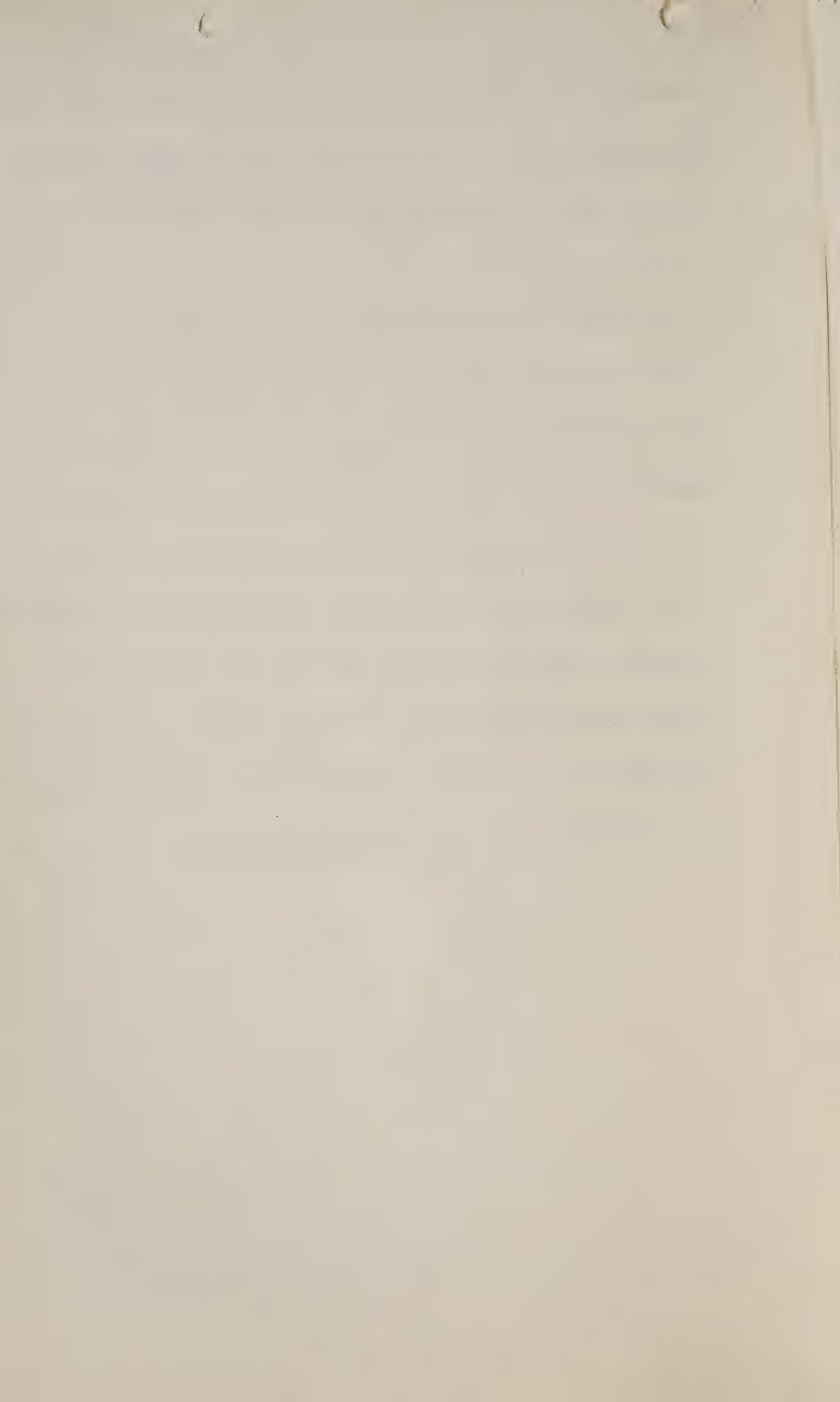
Attorney's Check list
for Bankruptcy Interview

transferred exceeded 50 percent of the assets of the community.

In re Chappel (1965) 243 F Supp 417. See also Britt v Damson (9th Cir 1964) 334 F2d 896, cert den 379 US 966.

131 F2d 100

In cases of actions by the trustee in bankruptcy to recover community property not in the possession of the bankrupt husband and held adversely by the wife, the trustee in bankruptcy has no right to proceed in the bankruptcy court to recover the property if the wife makes timely objection to the summary jurisdiction of the bankruptcy court to determine the matter. Martoff v Elliott (9th Cir 1963) 326 F2d 204. In such cases the matter must be determined in a "plenary" proceeding, in the state courts or before the judges of the U. S. District Court. Martoff v Elliott, supra.



B. [§9.2.10] ATTORNEY'S CHECKLIST FOR BANKRUPTCY INTERVIEW

The attorney must be sure that he has all information the client can provide without reference to records by the end of the first interview. He must also completely explain the nature of the bankruptcy remedy and the need for accurate information. It is important to analyze facts given in the interview and, when appropriate, to question the client further to discover forgotten or deliberately withheld information.

When interviewing the client, counsel should cover the following points:

1. general nature of bankruptcy relief (see §9.1.6);
2. nondischargeability of certain debts --
 - a. alimony, child support, attorney's fees ordered in divorce action (see Bankruptcy Act §17a(2), 11 USC §35(a)(2)),
 - b. taxes except taxes more than 3 years old when no fraud involved (Bankruptcy Act §17a(1), 11 USC §35(a)(1))
 - c. debts created by willful and malicious injuries (see Bankruptcy Act §17a(2), 11 USC §35(a)(2); Cowans §§453-459; Collier Bankruptcy Manual ¶17.03 (1966), hereafter referred to as Collier ¶ .
 - d. Credit obtained by false financial statements or fraud (see Bankruptcy Act §17a(2), 11 USC §35(a)(2); Cowans §§441-452).

Note: Inform the client that a finance company can sue in state court long after his discharge and claim that he has given a false financial statement or otherwise used fraud to obtain credit prior to discharge (see §§9.4.48-9.4.56). If he is served with any papers, the client should report it to his attorney immediately.

e. conversion (see First Nat'l Bank v Podjin (1965)

61 Ill App 2d 310, 210 NE 2d 332; §§9.4.57-9.4.60)

f. debts the client forgets to list on his schedules

(see Bankruptcy Act §17a(3), 11 USC §35(a)(3); Cowans

§§463-471)

g. debts listed, but with improper or inadequate add-

resses, so that creditor receives no notice (Bankruptcy Act

§17a(3), 11 USC §35(a)(3))

3. possible loss of discharge (with all listed obligations permanently nondischargeable) for-

a. fraudulent transfers (emphasize that transfers to be

nonfraudulent must be for present consideration) (see Bank-

ruptcy Act §14c(4), 11 USC §32(c)(4); §§9.1.12, 9.1.19)

b. prior discharge within six years (see Bankruptcy Act

§14c(5), 11 USC §32(c)(5); §9.1.19)

c. failure to obey orders of court in present bankruptcy

(Bankruptcy Act §14c(6), 11 USC §32(c)(6))



d. refusal to answer a material question approved by the court (Bankruptcy Act §14c(6), 11 USC §32(c)(6))

e. failure to pay filing fee at time of first interview, or within time set by court (see Bankruptcy Act §14c(8), 11 USC §32(c)(8))

4. the importance of keeping the attorney advised of any change of address, since the client may lose his discharge by failing to appear at the first meeting of creditors or other hearing called by the court (Bankruptcy Act §7a(1), 11 USC §24(a)(1))

5. assets not covered by exemption statutes, which should be pawned, assigned, or otherwise pledged for present value, with proceeds deposited in exempt savings and loan associations or credit unions or used to pay off secured exempt items)(see §§9.3.14-9.3.20) are:

a. bank accounts, which should be closed, reduced to a nominal sum, or transferred to an exempt savings and loan (see CCP §690.21)

b. auto worth more than \$350(client should increase loan to approximate value)(see CCP §690.24)

c. power tools*

d. guns* (one rifle and one shotgun exempt) (CCP §690.2)

e. musical instruments*



1. stamp or coin collections

g. hi-fi and records*

h. second television set (CCP §690.2)

i. cameras*

j. sporting equipment*

k. income tax refunds

l. other

*Unless tools of client's trade

6. friends or relatives who may have cosigned on notes for client are not discharged by client's bankruptcy (see Bankruptcy Act §16, 11 USC §34; §9.1.23)

7. under conditional sales contract a secured creditor can generally repossess property that is not paid for despite the discharge (but see Glessner v Massey-Ferguson, Inc. (9th Cir 1965) 353 F2d 986, when security interest not perfected before 4 months prior to filing)

8. possible pressure from creditors to have client reaffirm his obligations after discharge (Warn the client to say and to sign nothing. Tell him to refer all calls from creditors to his lawyer.) (see Cowans §893.)

9. discharge does not automatically take care of any pending or future actions on listed debts (Impress upon client that he must come to you immediately if he is served with any papers.) (see Bankruptcy Act §11a, 11 USC §29(a); Cowans §§923-



929, ~~willier~~ 11.00-11.04; §§9.4.54-9.4.66

10. the Bankruptcy Act provides criminal sanctions for

a. concealing assets (see Bankruptcy Act §14c(1),

11 USC §32(c)(1); 18 USC §152)

b. making a false oath or account at any point in the bankruptcy proceedings (applies to all oaths and to all schedules, both asset and liability.) (see Bankruptcy Act §14c(1),

11 USC §32(c)(1); 18 USC §152)

11. "easy" new credit should be avoided

C. [§9.2.11] INSTRUCTING CLIENT ON USE OF INTERVIEW SHEET

The interview sheet is intended to correlate with the Statement of Affairs and the Schedules which must be prepared if a determination to seek bankruptcy is made. The questions are divided into the categories of the official forms (i.e., Statement of Affairs, Schedule A-1, etc.) and are titled Preliminary Statement of Affairs, Preliminary Schedule A-1, etc. They are given first in their entirety to facilitate reproduction and then in annotated form as a guide to their use. The questions are phrased differently from those on the Statement of Affairs and the Schedules since it is always advisable to ask the client a question in more than one way. However, the information obtained is that required on the official forms, e.g., residence addresses for past six years, income for past two years, etc.

This form is not a substitute



for an interview when the schedules are filled in and the client signs them. At that time, the initial interview information should be checked against the schedules so that any discrepancies can be explained and taken care of.

Discovering the facts in a bankruptcy case is often difficult. Because of the serious consequences of misstatement or nonstatement of facts, attention to detail on the part of the attorney and insistence on accuracy from the client are indispensable to proper counseling.

The sheet may be used by the attorney interviewing the client or may be given to the client to fill out either at the office or at home. If possible, it is advisable for the attorney himself to interview the client, since the client working alone is much less likely to recall all of the necessary facts. It may be advisable to complete as much of the interview sheet as possible at the initial meeting and then to give a duplicate copy of the sheet to the client, asking him to return the completed sheet to the attorney within a set period of time.

However, the preliminary list of creditors should always be prepared by the client so that if he claims in court that he gave the information to the attorney and that the attorney neglected to transcribe it properly, the attorney will have proof in the client's own handwriting



of the information the client provided. If the interview sheet is handed to the client, it is wise to include the following instruction sheet. In all cases the client should be furnished with the "Items To Bring to Your Lawyer" list.

1. [\$9.2.12] Sample: Instructions to Client

All the information asked for on this questionnaire is important. Answer every question carefully and completely. If the answer to a question is "No" or "None," write that in. Leave no question blank.

When you list your creditors, list all of them, even those whom you intend to pay. List their names and addresses in full. If a collection agency or lawyer has taken over a debt that you owed to someone else, list the name of your original creditor, the collection agency (including any office of that agency with which you have done business), the lawyer, the finance company, and anyone else who has communicated with you about the debt. If you cosigned or guaranteed anyone else's note, you must list that debt too. If you do not know the exact amount that you owe, list the approximate amount and do not estimate too low.

When you list any property you own, list its value at what you would be able to sell it for in its used condition, not what you paid for it new. If you are not sure of the value, list an approximate figure and discuss the matter



with your lawyer when you bring the papers to him. If you own your home, list the address and the legal description (the description that appears on your deed).

If you do not have room on the form to complete the information asked for, attach additional sheets where necessary.

Make a note of any questions you do not understand or cannot fully answer so that you can discuss them with your lawyer.

Take your time. Any debt you do not list will not be discharged. Inaccurate or incomplete answers may result in a complete loss of your right to a discharge in bankruptcy.

2. [§9.2.13] Sample List: Items To Bring to Attorney

1. A list of all your creditors with names and addresses in full.
2. Any contracts signed by you.
3. All legal papers regarding any lawsuits either brought by you or against you.
4. All letters from:
 - a. Lawyers
 - b. Collection agencies
 - c. Finance companies
 - d. Other creditors.



5.a. [If you own or are buying your home] Deed or copy of title insurance policy on your home, copy of mortgage or trust deed, declaration of homestead (if any), any other legal papers involving this property.

b. [If you are renting] Copy of your lease.

6. [If you own or are buying any other real estate, including cemetery lots] Deed and any other legal papers involving this property.

7. Stock certificates or bonds.

8. Insurance policies.

9. Copy of any tax returns filed in past three years.

10. [If you are divorced or in the process of getting a divorce] Any orders or decrees of the court and property settlement agreement, if any.

11. Title papers to automobile or registration certificate.

12. Inventory of your personal property, e.g., TV, guns, furniture, jewelry, etc.

13. [If you are or have been in business]

a. Inventory of office equipment

b. Inventory of shop equipment

c. Inventory of stock

d. List of accounts receivable and amounts due,

names and addresses in full

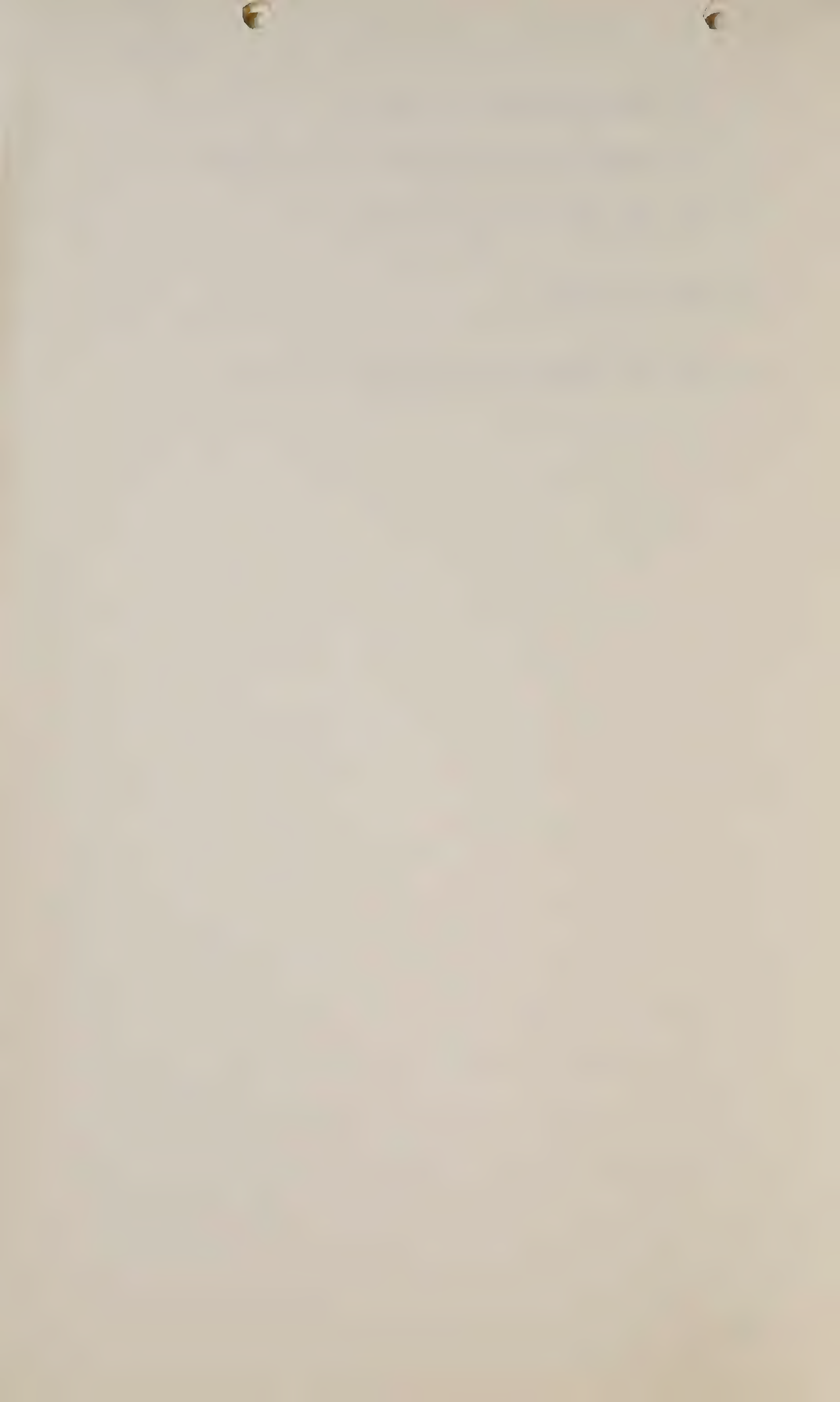
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with -

- e. Balance sheets (if prepared)
- f. Profit and loss statements (if prepared)
- g. Any other business records.

D. INTERVIEW SHEET

1. [\$9.2.14] Form: Bankruptcy Interview Sheet



a. Introductory Information - Preliminary Statement of Affairs

1.(a) What is your full name (no initials)?

(b) Have you been known by any other name or signed your name any other way during the past six years? Yes___ No___
If so, please list all names or different ways of signing. _____

2. List all addresses where you have lived during the past six years indicating the months and years during which you lived there. (List present address first.)

<u>Street</u>	<u>City</u>	<u>County</u>	<u>From</u> <u>Month</u> <u>Year</u>	<u>To</u> <u>Month</u> <u>Year</u>	<u>Own</u>	<u>Rent</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

(Attach additional page if more space needed.)

3. At what telephone numbers can you be reached?

Day_____ Evening_____

4.(a) What type of work do you do? _____

(b) Are you presently employed? Yes___ No___ If
yes, give full name and address of employer. _____

(c) How long have you held your present job? _____

When are you paid? _____



(d) Have you been in business by yourself or with others during the last six years? Yes___ No___ If yes, give names and addresses of business and names of partners, if any. _____

5.(a) Are you married?_____ Divorced?_____ Separated?_____ Divorce Pending?_____

(b) If married, what is your wife's name?_____

(c) Is she employed? Yes___ No___ If yes, give full name and address of employer. _____

(d) How long has she held her present job?_____

6. List names, relationship and ages of all dependents, and addresses, if different from yours.

<u>Name</u>	<u>Age</u>	<u>Relationship</u>	<u>Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

7. List below all income received during the last two years by yourself or your spouse from any source.



8. When and where did you file your last federal and state income tax returns?

	<u>Date</u>	<u>State</u>	<u>City</u>	<u>Joint with Spouse?</u>	
				<u>Yes</u>	<u>No</u>
Federal:	_____	_____	_____	_____	_____
State:	_____	_____	_____	_____	_____

If no federal and/or state tax return was filed within the past three years, give year and reason for not filing. _____

9.(a) What bank accounts have you had during the last two years alone or with others? (Give name and address of the banks, whether checking or savings accounts, and if the account was held jointly with others, give their names. Indicate any accounts that are still open.)

(b) Have you had a safe deposit box during the last two years? If so, give details, including contents of the box.

10. What records or books have been kept relating to your affairs during the last two years? _____

11. Do you have any property that is not yours that



you are holding for the benefit and use of someone else

(e.g., property held in trust for your children; property

you are holding for safekeeping for friends, relatives; etc.)?

Yes _____ No _____ If so, please describe. _____

12. Have you filed a bankruptcy, or a Wage Earners' Plan under Chapter XIII of the Bankruptcy Act, during the last 6 years? Yes _____ No _____ If so, bring papers.

(a) Bankruptcy:

<u>Location of Court</u>	<u>Was there a discharge?</u>		<u>Date of discharge</u>
	<u>Yes</u>	<u>No</u>	
_____	_____	_____	_____
_____	_____	_____	_____

(b) Wage Earners' Plan:

<u>Location of Court</u>	<u>Composition?</u>	<u>Arrangement?</u>	<u>Was Plan</u>
			<u>Confirmed?</u> <u>Completed?</u>
_____	_____	_____	_____
_____	_____	_____	_____

Have you ever filed a bankruptcy or Wage Earners' Plan?

If so, when? _____

13. Are you presently a party to a pending lawsuit or have you been a party to a lawsuit of any kind during the last year? Yes _____ No _____ If yes,

<u>Title of suit</u>	<u>Action Number</u>	<u>Name & Location of Court</u>
_____	_____	_____



Nature of Suit Result

14. Have you been involved in any auto accidents within the past four years? Yes_____ No_____ If yes, give details.

15. Has any of your property or wage been taken by court order (attached or garnished) in the last four months? Yes_____ No_____ If yes, give details.

<u>Creditor</u>	<u>Date of Levy</u>	<u>Amount</u>
_____	_____	_____

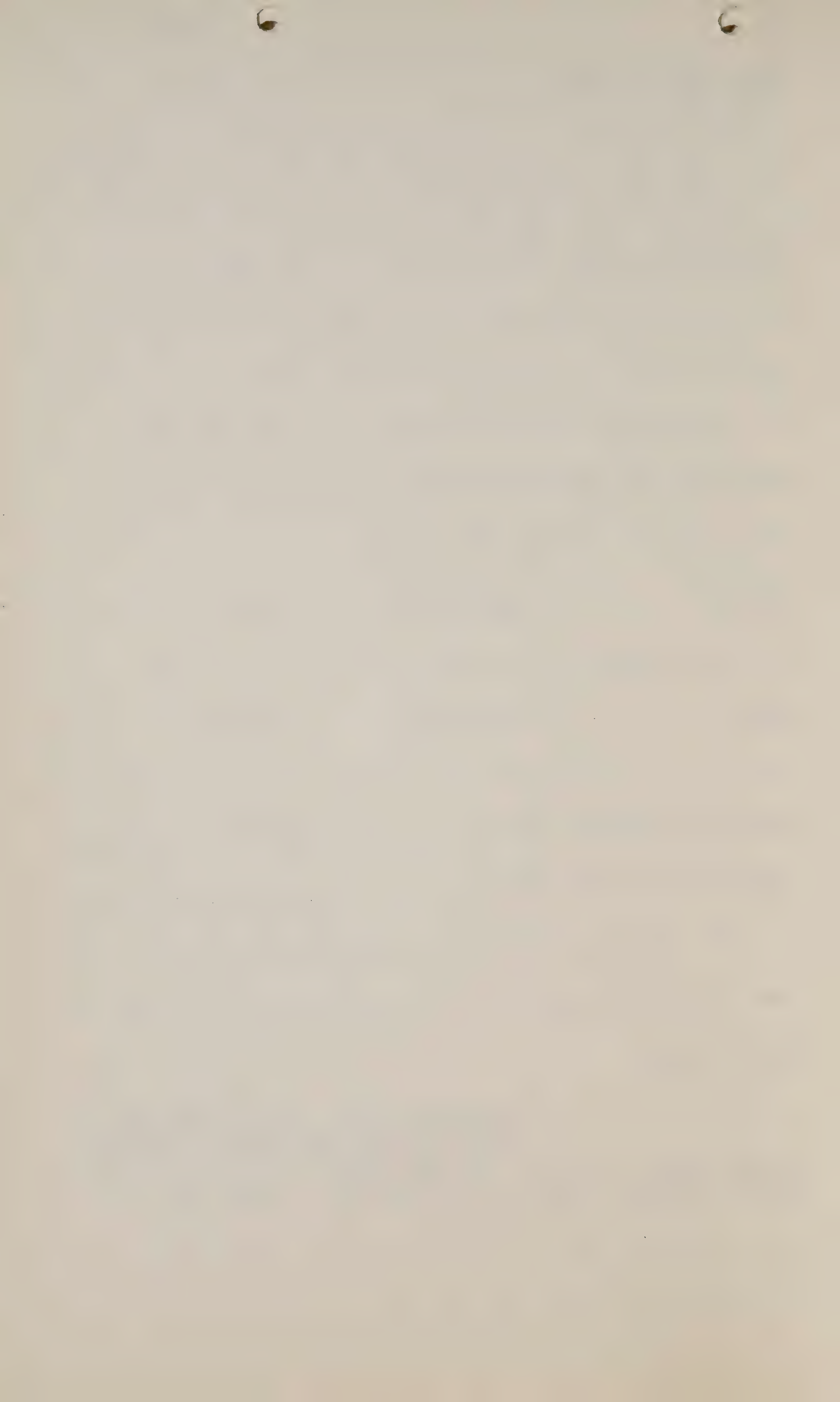
<u>Court</u>	<u>Court Number</u>	<u>Paid Over</u>
_____	_____	_____

Sheriff or Marshal's Office _____ File No. _____

Writ of Execution or Attachment _____

16. Have you repaid a loan during the past year (between one year ago and today)? Yes_____ No_____ If yes, give the following:

<u>TO WHOM PAID</u> <u>(name & address)</u>	<u>AMOUNT</u> <u>PAID</u>	<u>MONTHS IN WHICH</u> <u>PAYMENTS WERE MADE</u> <u>(indicate how much</u> <u>was paid during</u> <u>last 4 months)</u>	<u>WAS PERSON WHO</u> <u>LOANED YOU THE</u> <u>MONEY A RELATIVE?</u>	
			<u>Yes</u>	<u>No</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____



Please bring your payment books with you.

17. Have you sold any of your property, given substantial property or cash away, or had property repossessed within the last year? (Includes repossessions, old car traded in on new, pledges and assignment made to protect nonexempt assets. Be sure creditors are listed on creditor schedule, especially repossessors.) Yes_____ No_____

If yes, give the following:

<u>DESCRIPTION OF PROPERTY</u>	<u>WHAT WAS RECEIVED IN RETURN?</u>	<u>MONTH OR YEAR OF GIFT OR SALE</u>	<u>WAS SALE OR GIFT TO A RELATIVE?</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

18. Did you lose a substantial amount of property or money as a result of fire, theft, or gambling during the last year? Yes_____ No_____ If yes, give the following:

<u>DESCRIPTION OF PROPERTY</u>	<u>WHAT CAUSED THE LOSS?</u>	<u>WHAT WAS THE VALUE OF THE MONEY OR PROPERTY THAT WAS LOST?</u>	<u>MONTH OF THE LOSS</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

19. Are you likely to inherit any money within the next six months? If so, indicate source and amount._____



b. Liability Information

1. Priority Claims - Preliminary Schedule A-1

a. If you employed anyone (such as regular employees, cleaning women, gardeners, babysitters) during the last three months do you still owe them wages? Yes____ No____ If yes, give name and address of employee, dates worked, amount owed, and work done. _____

b.(1) Do you owe any taxes to the United States, e.g., income tax, social security taxes withheld for domestic help, etc.? Yes____ No____ If yes, give the department or agency to which the tax is owing, the address of the department or agency, the kind of tax that is owing, and the years for which the tax is owing. _____

(2) Do you owe any taxes to any states, e.g., income, license, sales, etc.? Yes____ No____ If yes, give the name of the state and the department or agency therein, the address of the department or agency, the kind of tax that is owing, and the years for which the tax is owing. _____

(3) Do you owe any taxes to a county, district, or city, e.g., real or personal property? Yes____ No____ If yes, give the name of the county, district, or city, the kind of tax that is owing, and the years for which the tax



c. Besides taxes, do you owe any other money to any branch of the United States government (e.g., F.H.A. repossessions, or money owed Small Business Administration, etc.)? Yes____ No____ If yes, give the name of the branch, its address, the amount owing, and why it is owed. _____

d. Do you owe rent to a landlord for any of the last three months? Yes____ No____ If yes, give the name and address of the landlord, and the amount owing. _____



2. Secured Creditors - Preliminary Schedule A-2

(Answer Every Question)

Do you owe any money for goods or for a loan whereby goods can be taken by the seller or by the person who loaned you money (do you have any secured creditors)? (Be sure to remember real estate)

Yes _____ No _____

FULL NAME OF CREDITOR (ASSIGNOR) AND HIS PRESENT ADDRESS	WHEN DID YOU FIRST OWE THE MONEY? (MONTH & YEAR)	WHAT WAS DEBT FOR? IF FOR LOAN OF MONEY, HOW WAS THE MONEY USED, AND WHAT PROPERTY (SECURITY) CAN BE TAKEN IF YOU FAIL TO REPAY THE LOAN?	HOW MUCH DID YOU OWE INCLUDING INTEREST FEES AND CHARGES FOR LATE PAYMENTS? (MAKE A HIGH ESTIMATE)	HOW MUCH ARE THE GOODS WORTH NOW?	WHERE ARE THE PURCHASED GOODS NOW LOCATED? IF REPOSSESSED, GIVE DATE	NAME & ADDRESS OF COLLECTION AGENCY, OTHER ASSIGNEES, AND ATTORNEYS WHO ARE TRYING TO COLLECT THE DEBT	IS DEBT DISPUTED?
--	--	---	--	-----------------------------------	--	--	-------------------



3. Unsecured Creditors - Preliminary Schedule A-3

(Answer Every Question)

Do you owe any money for goods, services, or loans whereby no goods can be taken (do you have any unsecured creditors)?

(Don't forget doctor bills, loans from relatives, etc.)

List these creditors in alphabetical order.

FULL NAME OF CREDITOR (ASSIGNOR) AND HIS PRESENT ADDRESS	GIVE DATE YOU FIRST OWED MONEY. IF DEBT WAS FOR GOODS OR SERVICES BOUGHT OVER A PERIOD OF TIME, GIVE BEGINNING AND ENDING DATE OF PERIOD	WHAT WAS DEBT FOR?	HOW MUCH DID YOU FIRST OWE? IF GOODS OR SERVICES WERE BOUGHT OVER A PERIOD, WHAT DID YOU OWE AT THE END OF THE PERIOD?	HOW MUCH DO YOU NOW OWE INCLUDING INTEREST FEES AND CHARGES FOR LATE PAYMENTS?(A HIGH ESTIMATE)	NAME & ADDRESS OF COLLECTION AGENCY, OTHER ASSIGNEES, AND ATTORNEYS WHO ARE TRYING TO COLLECT THE DEBT	IS DEBT DISPUTED?



2 4. Other Creditors - Preliminary Schedules A-4 and A-5

Have you recently tried to pay a debt by endorsing to your creditors a check made payable to you? Yes _____ No _____

If yes, give details. _____

Have you ever promised to pay someone else's debt if he did not pay it? Have you ever cosigned for anyone?

Yes _____ No _____ If yes, list name of person(s). _____

Have you borrowed any money for someone else's benefit?

Yes _____ No _____

c. Asset Information

1. Real Property - Preliminary Schedule B-1

1. Do you own an interest in real property (land, buildings, your own home, or burial plot)? Yes _____ No _____

2. Bring in any papers relating to your interest in real property (e.g., relating to mortgages, deeds of trust, homesteads, title, and title insurance).

2. Personal Property - Preliminary Schedule B-2

1. Do you have any cash on hand (not in banks or in savings and loan)? Yes _____ No _____ If yes, how much? _____



2. Do you have any stocks or bonds? 1 No

If yes, describe and give value. _____

3. Do you have any stock in trade (inventory)?

Yes	No	If yes, describe and give value.

4. List your major appliances (e.g., stove, refrigerator, TV, sewing machine, etc.) giving approximate age and value (what you could get for it if you sold it). (Indicate by underlining or circling which appliances are mortgaged or held under conditional sales contract.) _____

5. Give an estimate of the value (what you could get for it if you sold it) of the following: (Indicate by underlining or circling which are mortgaged or held under a conditional sales contract)

All your furniture: _____

All your minor appliances: _____

All your clothing: _____

All your jewelry: _____

All your other household goods (e.g., dishes, utensils, food, household tools, tools not used in business, etc.): _____

6. Have you any books, prints, or pictures of substantial value? Yes _____ No _____ If 'yes,' indicate value.



7. Do you have any automobiles or truck Yes _____ No _____

If yes, give the year, make, model, and its value (what you could sell it for). _____

8. Do you have an interest in or own any machinery, tools, or fixtures used in your business or work? Yes _____ No _____

If yes, describe and give value (what you could sell it for). _____

9. Do you own anything else of substantial value (e.g., sports equipment, guns, boats, photographic equipment, etc.)?

Yes _____ No _____ If yes, describe and give value (what you could sell it for). _____

3. Other Sources of Money - Preliminary Schedule B-3

1. Does anyone owe you any money? Yes _____ No _____

If yes, give his name, his address, what for, and how much. _____

2. Do you have any insurance policies with a cash surrender value? Yes _____ No _____

Bring the insurance policies, except health insurance policies, with you.

3.(a) Are you suing anyone, or do you have any possible reason for suing someone, for injuries or money owed to yourself or other members of your family? Yes _____ No _____ If yes, he



prepared to give details.

(b) Do you have money in a retirement fund where you work? Yes _____ No _____ If so, indicate name of fund and approximate amount. _____

Have you accumulated vacation time due you? Yes _____ No _____ If so, indicate amount and approximate value. _____

Have you ever posted a cash bond? Do you expect your money to be returned? Yes _____ No _____ If so, indicate with whom bond posted and amount. _____

Do you expect to receive an income tax refund? Yes _____ No _____ If so, indicate amount expected. _____

4. Do you have any money deposited anywhere (e.g., bank deposits, saving and loan deposits, credit union or rental deposit)? Yes _____ No _____ If yes, give the following:

WHO HAS THE DEPOSIT?	THEIR ADDRESS	WHAT WAS DEPOSIT FOR?	WHAT AMOUNT WAS DEPOSITED?
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Revisions, Remainders, and Expectancies - Preliminary Schedule B-4

(a) Are you the beneficiary of a trust? Do you expect



If so, give details and value. _____

(b) Do you expect to receive a gift of more than a small amount of money or property (e.g., over \$5.00) at any time in the near future? Yes _____ No _____ If yes, be prepared to give details.

(c) Do you expect to receive a tax refund at the end of the year? Yes _____ No _____ If yes, estimate the amount as best you can. _____

5. Exemptions - Preliminary Schedule B-5

See Exemption Checklist §9.3.13.

What is your monthly take-home pay? _____

How much of your take-home pay do you budget for each
of the following categories?

FOOD & DRINK _____

Groceries

Milk

Bakery

Liquor

Other

CLOTHING _____

Outright Purchases

Revolving Accounts

Shoes

Cleaning

Repairing

Other

HOUSING _____

Rent or Loan Payments

PG&E

Phone

Water

Sewage

Domestic Help

Payments on washing
machine, etc.

If buying home:

Taxes

Repairs & Remodeling

Garden supplies (tools,
plants, etc.)

Other

CAR(S) _____

Loan payments

Insurance

Gas & Oil

Repairs & new parts

License

Traffic tickets

Other

MEDICAL _____

Doctor bills

Dental bills

Hospital charges

Insurance

Drugs & medications

Toothbrushes, etc.

Other

CHILDREN _____

School lunches

Baby sitters

Nursery school

PTA & other school affairs

Music lessons

Private tutors

Toys & birthday gifts

Other

UNION, BUSINESS, OR PROFESSIONAL _____

Commute

Dues

Tools & equipment

Subscriptions

Education

Laundry

Other

AMUSEMENTS _____

Entertainment (movies, theater,
etc.)

Books

Records

Photography

Subscriptions (newspapers,
magazines, etc.)

Gambling

Library fines

Other

SOCIAL & POLITICAL _____

Federal Income Taxes withheld

Social Security contributions

Federal Income Taxes paid
outright

State Income Taxes

State & local taxes (other
than real property)

Church

Charities

Political Donations

Other

MISCELLANEOUS _____

Vacations

Holidays

Special Family Events
(marriages, etc.)

Christmas

Retirement

Life Insurance

Other Insurance

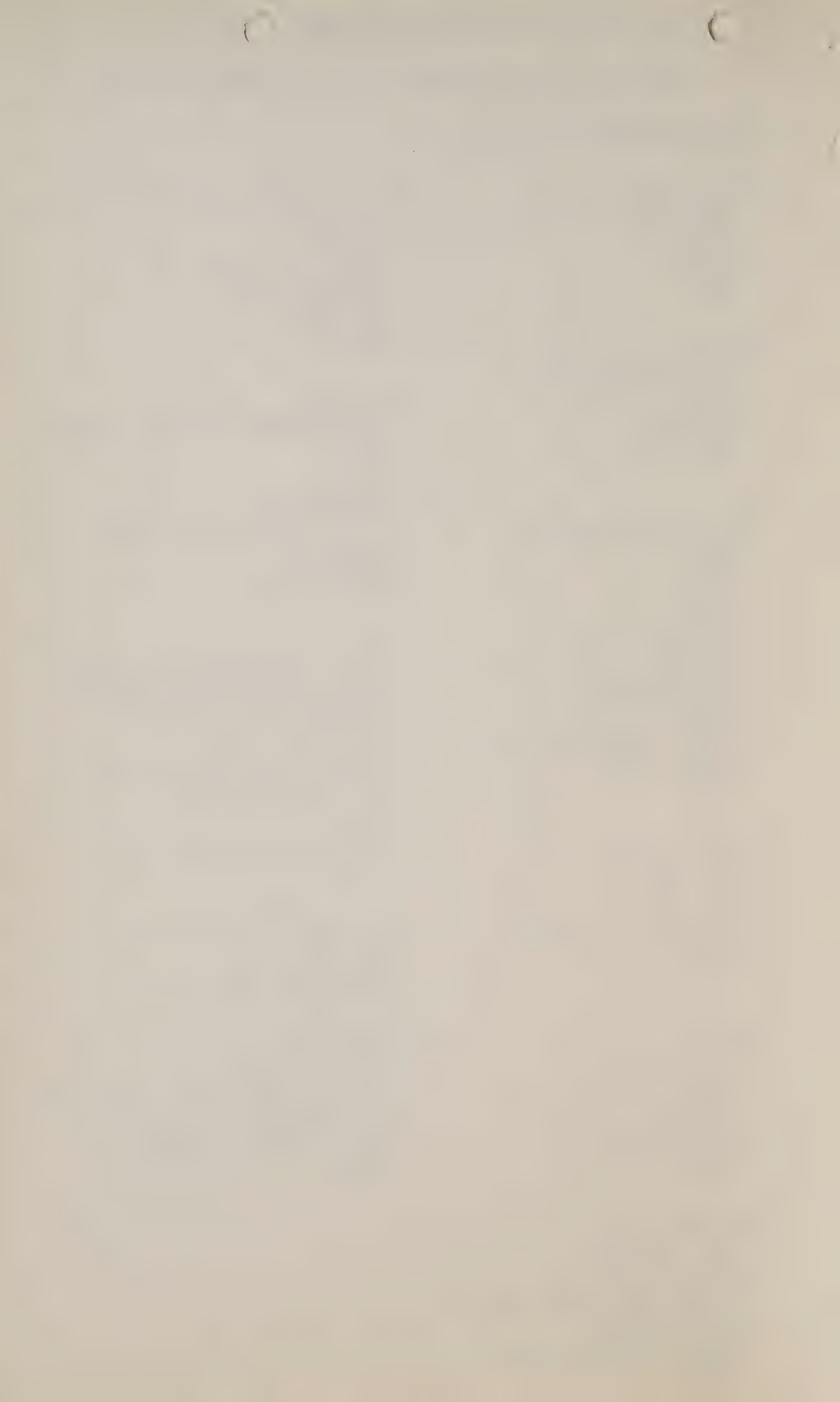
Haircuts, Beauty treatments, etc.

Bank Charges

Watch and other repairs

Debts reduced to judgment

Other



a. Introductory Information - Preliminary Statement of Affiars

1.(a) What is your full name (no initials)?

(b) Have you been known by any other name or signed your name any other way during the past six years? Yes___ No___
If so, please list all names or different ways of signing. _____

COMMENT: This may be important in detecting possible fraud which may prevent discharge. Bankruptcy Act §17a(2), 11 USC §35(a)(2).

2. List all addresses where you have lived during the past six years indicating the months and years during which you lived there. (List present address first)

<u>Street</u>	<u>City</u>	<u>County</u>	<u>From</u> <u>Month</u> <u>Year</u>	<u>To</u> <u>Month</u> <u>Year</u>	<u>Own</u>	<u>Rent</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

(Attach additional page if more space needed)

COMMENT: Check to make sure no bankruptcies have been filed at other places where client has lived during the past six years, since the client's memory may be faulty. Discharge may be denied to anyone who has been granted discharge within the previous six years or who has had an approved composition arrangement or composition wage earner's plan in this period. Bankruptcy Act §14c(5), 11 USC §32c(5). If client owns property, use homestead information sheet §9.3.30 and file homestead. §9.3.30. If client owned property at any point, there may be an outstanding mortgage or trust deed under which he may be either primarily or secondarily liable.



11.20
3. At what telephone numbers can you be reached?

Day _____ Evening _____

COMMENT: It is essential to be able to contact the client at all times since if client does not appear at first meeting or respond to any order of the bankruptcy court, he may lose his discharge. Bankruptcy Act §§7a, 14c(6), 14e, 11 USC §§25(a), 32(c)(6), 32(e).

4.(a) What type of work do you do? _____

(b) Are you presently employed? Yes _____ No _____ If

yes, give full name and address of employer, _____

(c) How long have you held your present job? _____

COMMENT: If client has worked only a short period and was out of work or ill for some time prior to that, or vice versa, there may be a sizeable income tax refund which should be taken care of. See §9.3.43.

When are you paid? _____

COMMENT: Payday is significant since the trustee in many jurisdictions will take one-half of salary earned to date of filing.

Therefore, the attorney will want to:

1. File as closely after payday as possible
2. If agreeable with client's employer, get advance to cover lapse.

(d) Have you been in business by yourself or with

others during the last six years? Yes _____ No _____ If yes,

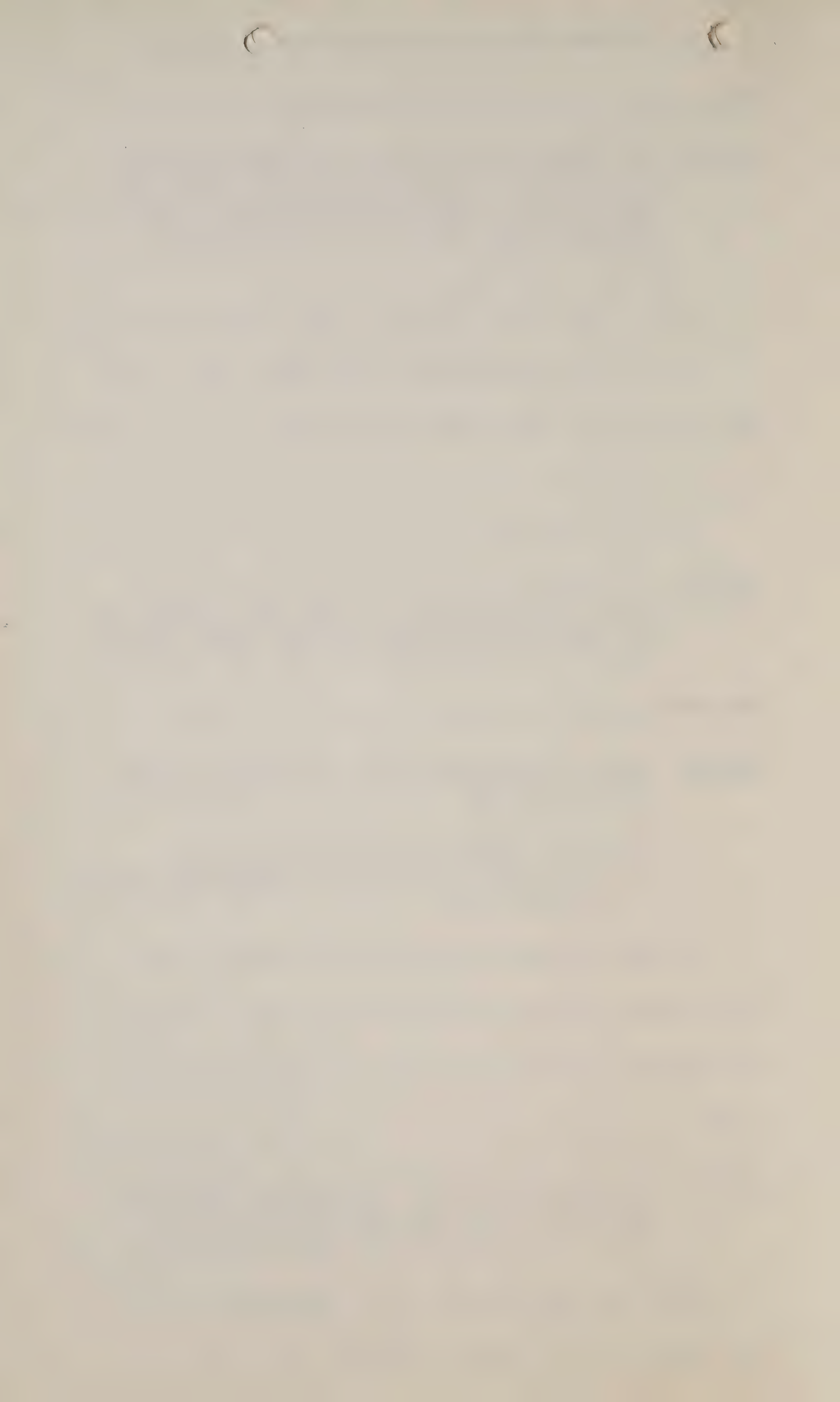
give names and addresses of business and names of partners,

if any. _____

COMMENT: It is possible that the applicant for bankruptcy was adjudged a bankrupt in a previous bankruptcy proceeding of a partnership of which he was a member. See Bankruptcy Act §5b, 11 USC §23(b).

5.(a) Are you married? _____ Divorced? _____

Separated? _____ Divorce Pending? _____



COMMENT: Alimony, child support, and wife's attorney's fees are not dischargeable. Bankruptcy Act §17a(2), 11 USC §35a(2). See Bankruptcy of Gorski (WD NY 1938) 25 F Supp 551; Krupp v Felter (1948) Miss _____, 77 NYS2d 665 (suit by attorney). See also Cowan §460, notes 45-46 and cases cited. If major factor, bankruptcy may be wrong remedy. Where there has been a divorce and the non-filing wife has the item which is security for one of client's debts, or where court has awarded item to her and she may have disposed of it, attorney should attach photocopy of decree to Statement of Affairs and Schedules. This may save client from continued harassment by "secured" creditors.

(b) If married, what is your wife's name? _____

(c) Is she employed? Yes _____ No _____ If yes, give full name and address of employer. _____

(d) How long has she held her present job? _____

6. List names, relationship, and ages of all dependents, and addresses, if different from yours.

<u>Name</u>	<u>Age</u>	<u>Relationship</u>	<u>Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

COMMENT: Information as to age, relationship, and location of dependent is relevant in determining the percentage of client's wages which may be released from attachment.

7. List below all income received during the last two years by yourself or your spouse from any source.



COMMENT: Be sure to ask about retirement or pension funds, stock purchase plans, and accrued vacation time. This information is also important in turning up assets that client may have forgotten.

8. When and where did you file your last federal and state income tax returns?

	<u>Date</u>	<u>State</u>	<u>City</u>	<u>Joint with Spouse?</u>	
				<u>Yes</u>	<u>No</u>
Federal:	_____	_____	_____	_____	_____
State:	_____	_____	_____	_____	_____

If no federal and/or state tax return was filed within the past three years, give year and reason for not filing. _____

COMMENT: Attorney should look at these returns to double-check asset information given to him by the client.

9.(a) What bank accounts have you had during the last two years alone or with others? (Give name and address of the banks, whether checking or savings accounts, and if the account was held jointly with others give their names. Indicate any accounts that are still open.)

COMMENT: Client should be advised to close out or reduce to under \$5.00 any bank accounts. If any savings exist, they should be transferred to an exempt savings and loan.

(b) Have you had a safe deposit box during the last two years? If so, give details, including contents of the box.



COMMENT: This question may turn up assets client has forgotten.

10. What records or books have been kept relating to your affairs during the last two years? _____

COMMENT: If client was in business, he may lose his discharge if his records are inadequate. Bankruptcy Act §14c(2), 11 USC §32(c)(2).

11. Do you have any property that is not yours and you are holding for the benefit and use of someone else (e.g., property held in trust for your children; property you are holding for safekeeping for friends, relatives; etc.)? Yes _____ No _____ If so, please describe. _____

COMMENT: There may be property held in a trust fund for the client's children, or property may be held by client for benefit of friend or relative attempting to avoid creditors.

12. Have you filed a bankruptcy, or a Wage Earners' Plan under Chapter XIII of the Bankruptcy Act, during the last 6 years? Yes _____ No _____ If so, bring papers.

(a) Bankruptcy:

<u>Location of Court</u>	<u>Was there a discharge?</u>		<u>Date of discharge</u>
	<u>Yes</u>	<u>No</u>	
_____	_____	_____	_____
_____	_____	_____	_____

(b) Wage Earners' Plan:

<u>Location of Court</u>	<u>Composition?</u>	<u>Arrangement?</u>	<u>Was Plan</u>
			<u>Confirmed?</u>
			<u>Completed?</u>
_____	_____	_____	_____



Have you ever filed a bankruptcy or Wage Earners' Plan?

If so, when? _____

COMMENT: Attorney should always verify this personally, and not rely on client's memory. See §9.2.16 for form letter.

13. Are you presently a party to a pending lawsuit or have you been a party to a lawsuit of any kind during the last year? Yes _____ No _____ If yes,

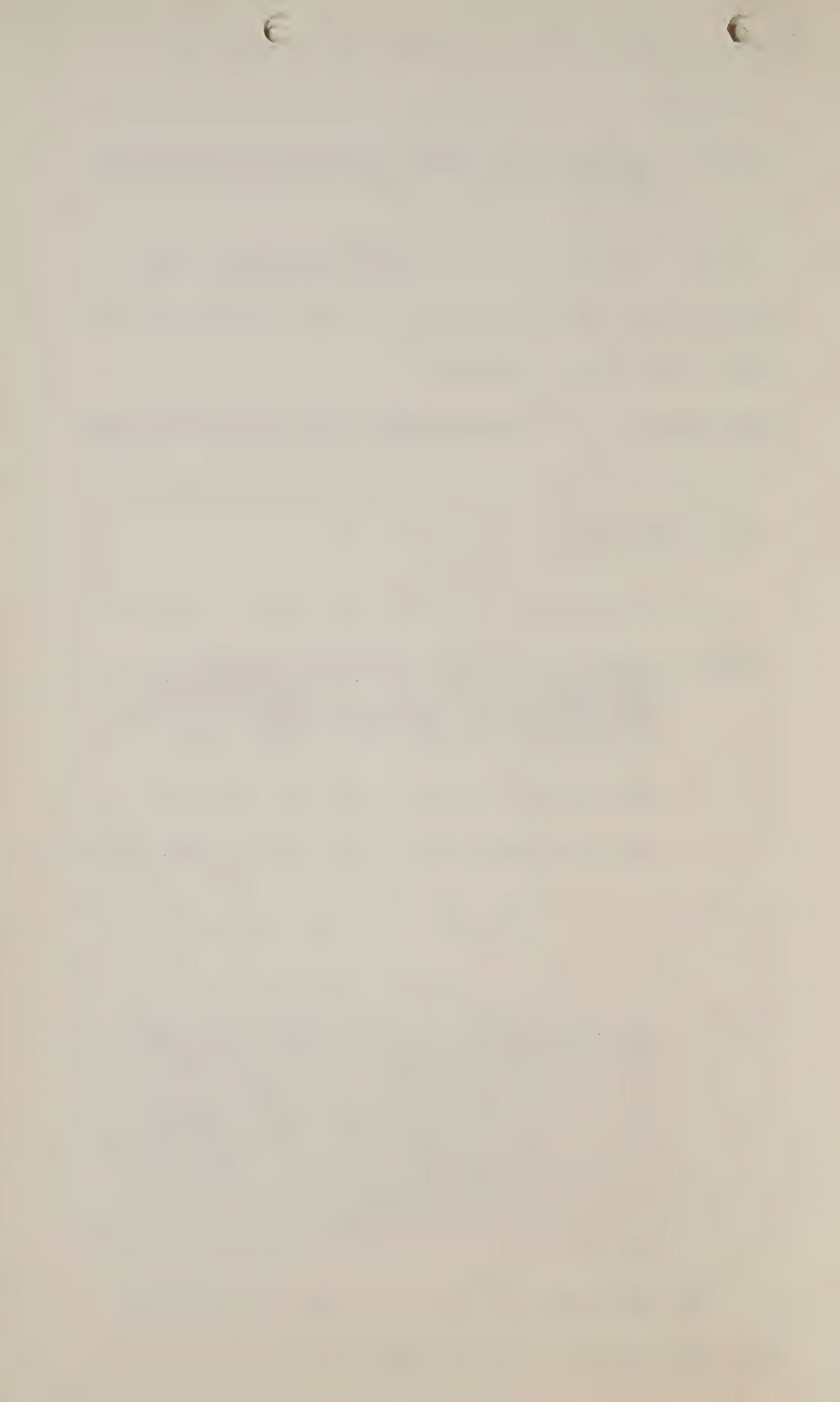
<u>Title of Suit</u>	<u>Action Number</u>	<u>Name & Location of Court</u>
_____	_____	_____
Nature of Suit Result		

COMMENT: If suit is still pending against defendant, attorney must protect action by obtaining written stipulation with attorney. See §§9.4.29-35 for forms dealing with restraining orders. For form answer setting up adjudication, see §9.4.46.

14. Have you been involved in any auto accidents within the past four years? Yes _____ No _____ If yes, give details.

COMMENT: If client is likely to be a defendant in such an action, delay filing bankruptcy until after suit is filed so discharge on verdict will be possible. If client is possible plaintiff, file bankruptcy first or client's recovery in a lawsuit becomes an asset of the bankrupt's estate under control of trustee. The four-year period is necessary because of the provisions contained in Ins C §11580.2(f). It is possible that bankrupt may be liable to an insurer as an uninsured motorist even after the four-year period has elapsed, so it is wise to ask if client has ever been involved in an accident while uninsured.

15. Has any of your property or wage been taken by court order (attached or garnished) in the last four months?



Yes _____ No _____ If yes, give details.

<u>Creditor</u>	<u>Date of Levy</u>	<u>Amount</u>
_____	_____	_____

<u>Court</u>	<u>Court Number</u>	<u>Paid Over</u>
_____	_____	_____

Sheriff or Marshal's Office _____ File No. _____

Writ of Execution or Attachment _____

COMMENT: For procedures to obtain release of attachment or garnishment see §§9.4.29-35. Attachments or garnishments within four months may be considered preferences (Bankruptcy Act §60(a), 11 USC §96(a)) and avoided (Bankruptcy Act §60(b), 11 USC §96(b)). Be sure to check this information against the list of creditors to make sure client has remembered to list attaching or garnishing creditor.

16. Have you repaid a loan during the past year (between one year ago and today)? Yes _____ No _____ If yes, give the following:

<u>TO WHOM PAID</u> <u>(name & address)</u>	<u>AMOUNT</u> <u>PAID</u>	<u>MONTHS IN WHICH</u> <u>PAYMENTS WERE MADE</u> <u>(indicate how much</u> <u>was paid during</u> <u>last 4 months)</u>	<u>WAS PERSON WHO</u> <u>LOANED YOU THE</u> <u>MONEY A RELATIVE?</u>	
			<u>Yes</u>	<u>No</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Please bring your payment books with you.

COMMENT: This question will indicate possible preferences. If payments have been made within four months of bankruptcy they may be voidable preferences under Bankruptcy Act §60a, 11 USC §96(a). See Cowans §§744-753. It also aids in finding creditors that bankrupt has intentionally not listed because he intends to reaffirm in order to keep the property.



17. Have you sold any of your property, given substantial property or cash away, or had property repossessed within the last year? (Includes repossessions, old car traded in on new, pledges and assignment made to protect nonexempt assets. Be sure creditors are listed on creditor schedule, especially repossessors.) Yes____ No____

If yes, give the following:

<u>DESCRIPTION OF PROPERTY</u>	<u>WHAT WAS RECEIVED IN RETURN?</u>	<u>MONTH OR YEAR WAS SALE OR GIFT OF GIFT OR SALE</u>	<u>WAS SALE OR GIFT TO A RELATIVE?</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

COMMENT: The question is relevant to the issue of whether there has been a transfer to defraud creditors within one year under Bankruptcy Act §14c(4), 11 USC §32c(4). Be sure creditors are listed on creditor schedule, especially repossessors, regardless of whether bankrupt indicates deficiency.

18. Did you lose a substantial amount of property or money as a result of fire, theft, or gambling during the last year? Yes____ No____ If yes, give the following:

<u>DESCRIPTION OF PROPERTY</u>	<u>WHAT CAUSED THE LOSS?</u>	<u>WHAT WAS THE VALUE OF THE MONEY OR PROPERTY THAT WAS LOST?</u>	<u>MONTH OF THE LOSS</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



COMMENT: This question will show up possible insurance or other chose in action claims. It is also relevant to issues raised by Bankruptcy Act §14c(4), 11 USC §329(4). See comment to question 17 supra.

19. Are you likely to inherit any money within the next six months? If so, indicate source and amount. _____

COMMENT: An inheritance within six months of the filing date becomes an asset to be administered by the trustee. Bankruptcy Act §70a, 11 USC §110(a).

b. Liability Information

1. Priority Claims - Preliminary Schedule A-1

a. If you employed anyone (such as regular employees, cleaning women, gardeners, babysitters) during the last three months, do you still owe them wages? Yes _____ No _____ If yes, give name and address of employee, dates worked, amount owed, and work done. _____

COMMENT: This rarely occurs in legal aid situation.

b.(1) Do you owe any taxes to the United States, e.g., income tax, social security taxes withheld for domestic help, etc.? Yes _____ No _____ If yes, give the department or agency to which the tax is owing, the address of the department or agency, the kind of tax that is owing, and the years for which the tax is owing. _____

(2) Do you owe any taxes to any states, e.g., income,



license, sales, etc? Yes_____ No_____ If yes, give the name of the state and the department or agency therein, the address of the department or agency, the kind of tax that is owing, and the years for which the tax is owing. _____

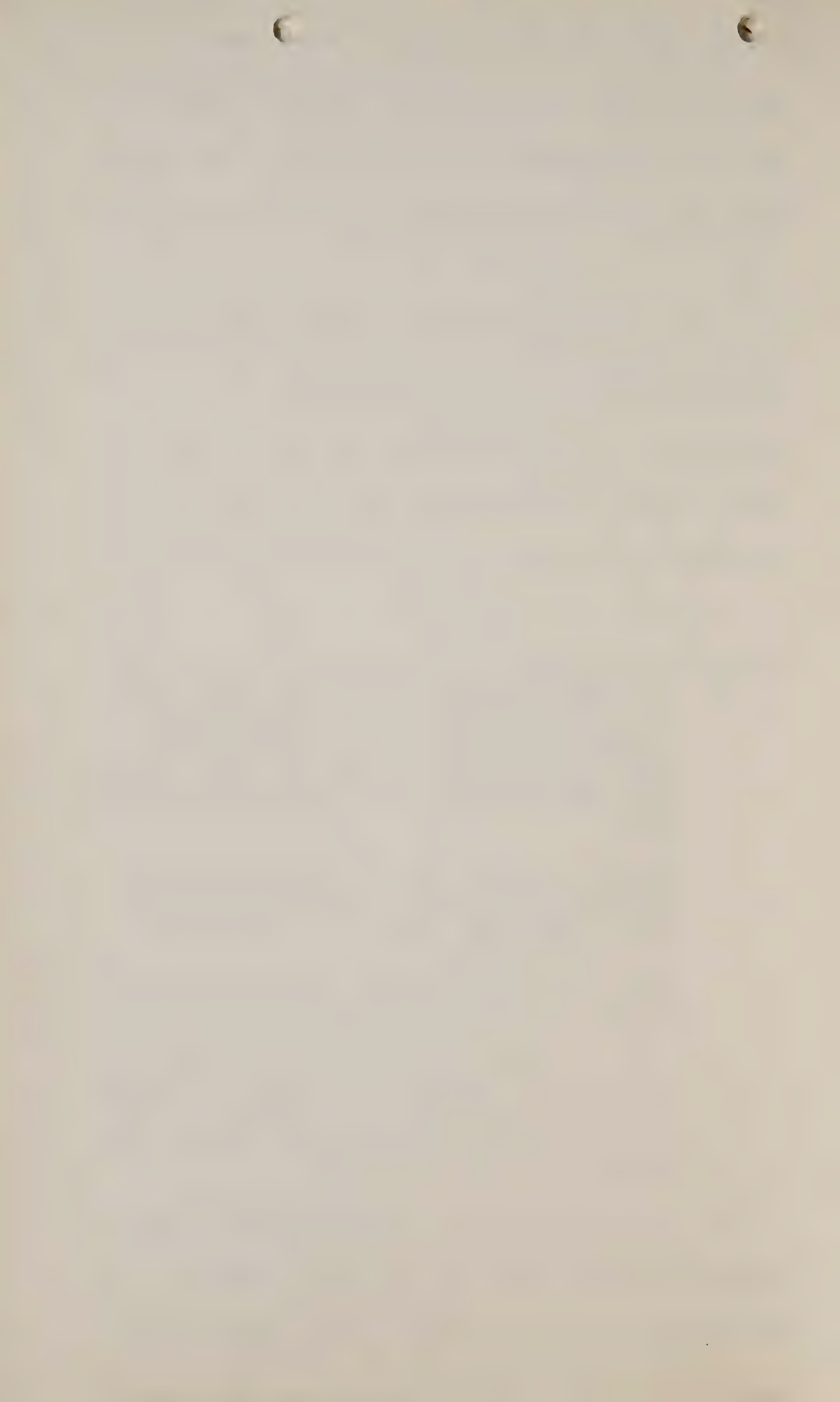
(3) Do you owe any taxes to a county, district, or city, e.g., real or personal property? Yes_____ No_____ If yes, give the name of the county, district, or city, the kind of tax that is owing, and the years for which the tax is owing. _____

COMMENT: Tax obligations incurred within three years prior to filing are nondischargeable. For this reason it is advisable to get as much information as possible to be sure taxing agency gets as much as possible from available assets. Bankruptcy Act §17a(1), 11 USC §35a(1) as amended in 1966, provides that tax debts not involving fraud and incurred more than three years prior to filing are dischargeable.

Often a client will have failed to file a state income tax return, and the attorney should press the client on this point. Examples of possible taxes owing include: real or personal property taxes, income taxes, etc.

Note: California has special procedures which it follows with respect to bankruptcies, and possible state tax obligations owed by bankrupts. These procedures are presently in the process of revision and will be discussed in the final version of this chapter.

c. Besides taxes, do you owe any other money to any branch of the United States government (e.g., F.H.A. repossessions, or money owed Small Business Administration, etc.)? Yes_____ No_____ If yes, give the name of the branch,

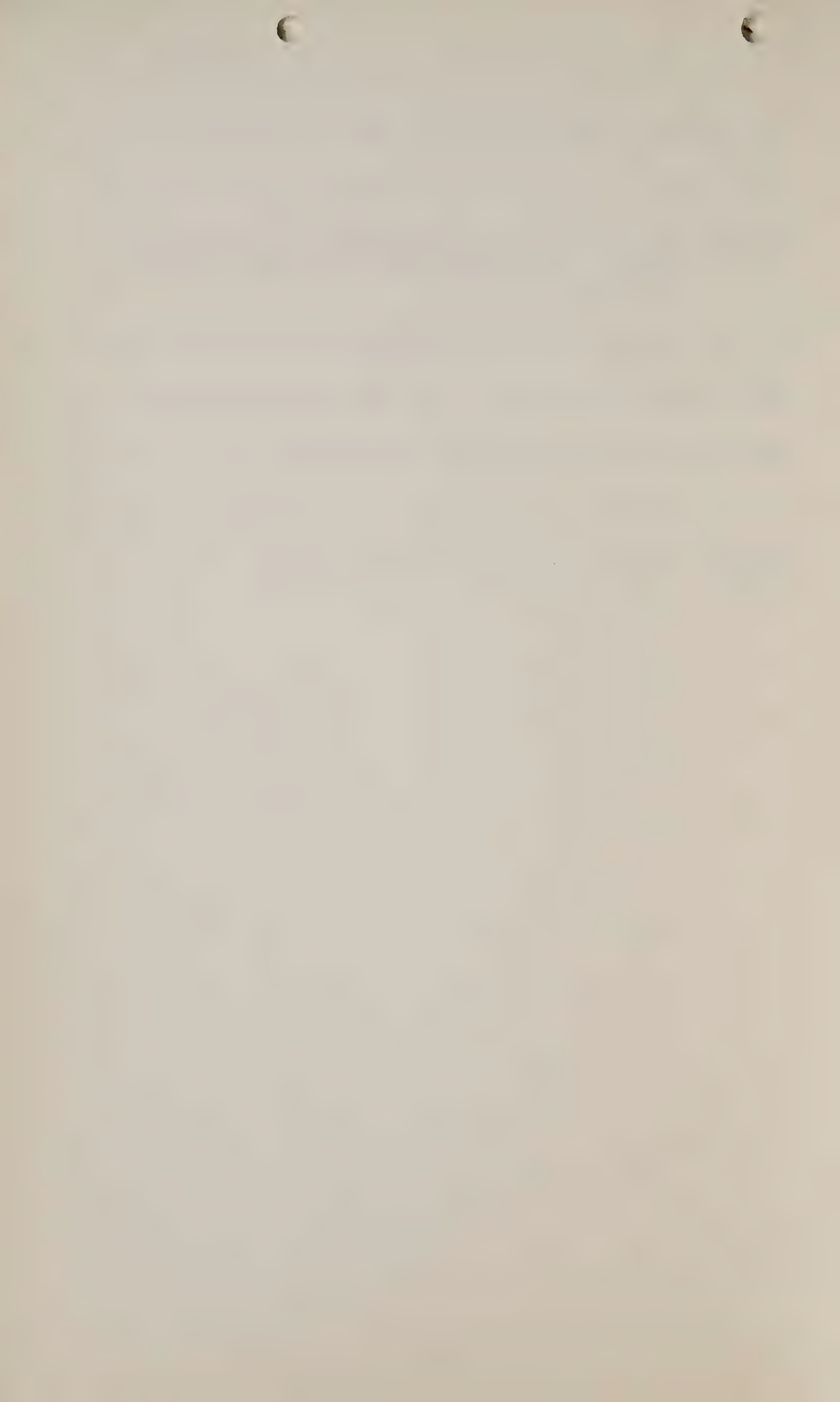


its address, the amount owing, and why it is owed. _____

COMMENT: Not all debts to government agencies are priority claims. If uncertain, check applicable federal statutes.

d. Do you owe rent to a landlord for any of the last three months? Yes _____ No _____ If yes, give the name and address of the landlord, and the amount owing. _____

COMMENT: California creates no rental priority.



2. Secured Creditors - Preliminary Schedule A-2

(Answer Every Question)

Do you owe any money for goods or for a loan whereby goods can be taken by the seller or by the person who loaned you money (do you have any secured creditors)? (Be sure to remember real estate)

Yes No

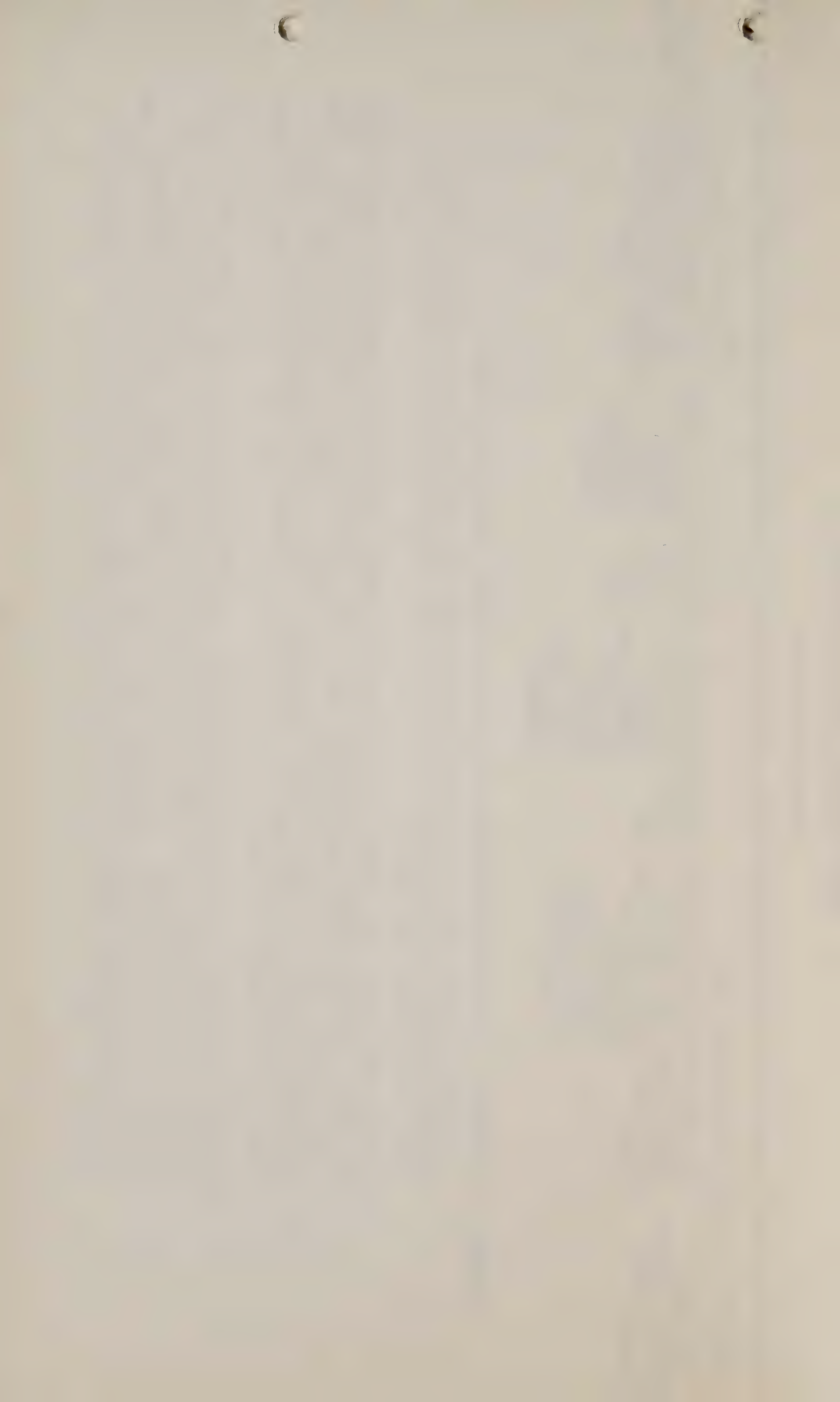
FULL NAME OF CREDITOR (ASSIGNOR) AND HIS PRESENT ADDRESS	WHEN DID YOU FIRST OWE THE MONEY? (MONTH & YEAR)	WHAT WAS DEBT FOR? IF FOR LOAN OF MONEY, HOW WAS THE MONEY USED, AND WHAT PROPERTY (SECURITY) CAN BE TAKEN IF YOU FAIL TO REPAY THE LOAN?	HOW MUCH DID YOU OWE?	HOW MUCH DO YOU NOW OWE INCLUDING INTEREST FEES AND CHARGES FOR LATE PAYMENTS? (MAKE A HIGH ESTIMATE)	HOW MUCH ARE THE GOODS WORTH NOW?	WHERE ARE THE PURCHASED GOODS NOW LOCATED? IF REPOSSESSED, GIVE DATE	NAME & ADDRESS OF COLLECTION AGENCY, OTHER ASSIGNEES, AND ATTORNEYS WHO ARE TRYING TO COLLECT THE DEBT	IS DEBT DISPUTED?
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COMMENT: 1. Doublecheck to make sure secured creditors on realty are listed. (Check asset schedule)

If the Veterans Administration has guaranteed a loan by a bank, the local office of the VA which processed the loan must be listed as well as the bank. A listing of the VA in Washington, D.C., is not sufficient. This is also true of other government agencies.

2. Often a client may not list a secured creditor because he intends to continue to make payment on the loan in order to retain the property mortgaged. The attorney must be alert to prevent this nonlisting. Contrary to this, some clients may believe that a discharge will permit them to keep such property without continuing to pay for it. The attorney should disabuse the client of this notion. At this point, it is important for the attorney to analyze which debts are actually as opposed to legally dischargeable. That is, if the large majority of the client's debts are secured obligations on property he wishes to retain, a bankruptcy may give the client little relief, and a wage earner plan may be advisable.

3. Negotiation with secured creditors at the time of filing is advisable if the client wishes to retain the property. Finance companies often take household goods for purposes of added pressure only and not as true security. Every attorney handling bankruptcy for a wage earner should attend an auction sale of repossessed household goods in his area to get an idea of values. He should also talk to a used furniture dealer. Fair play in negotiation should be the rule for legal aid. A reasonable guideline would be to offer to pay the reasonable value of the items plus 7% per annum to 4/6 of 1% per month interest for the new loan. If this is refused, which it nearly always is at the beginning of the bargaining, then you can ethically suggest that your client will not voluntarily surrender the security, and that a claim and delivery action will be necessary (see §9.1.2). If there is a



2. Secured Creditors - Preliminary Schedule A-2 (Continued)

(Answer Every Question)

Do you owe any money for goods or for a loan whereby goods can be taken by the seller or by the person who loaned you money (do you have any secured creditors)? (Be sure to remember real estate)

Yes _____ No _____

FULL NAME OF CREDITOR (ASSIGNOR) AND HIS PRESENT ADDRESS	WHEN DID YOU FIRST OWE THE MONEY? (MONTH & YEAR)	WHAT WAS DEBT FOR? IF FOR LOAN OF MONEY, HOW WAS THE MONEY USED, AND WHAT PROPERTY (SECURITY) CAN BE TAKEN IF YOU FAIL TO REPAY THE LOAN?	HOW MUCH DID YOU OWE? INCLUDING INTEREST FEES AND CHARGES FOR LATE PAYMENTS? (MAKE A HIGH ESTIMATE)	HOW MUCH ARE THE GOODS WORTH NOW?	WHERE ARE THE PURCHASED GOODS NOW LOCATED? IF REPOSSESSED, GIVE DATE	NAME & ADDRESS OF COLLECTION AGENCY, OTHER ASSIGNEES, AND ATTORNEYS WHO ARE TRYING TO COLLECT THE DEBT	IS DEBT DISPUTED?
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COMMENT:

possibility that your client has given a false financial statement, you may offer to liquidate the note as well. If no agreement can be reached here, then deal only with the security and allow the finance company to expressly reserve its rights as to a nondischargeable balance which may be litigated later, with less strain on your client.

4. Be sure that if money is owed to a finance company and the debt has been transferred from one office to another, both offices are listed.

5. Get data on any finance company or bank rewrites.

6. MAKE SURE ADDRESSES ARE ACCURATE.

7. If a claim is disputed, it should be noted as such on the interview sheet and in the schedules. Occasionally a client may come into money and want to dismiss under Bankruptcy Act §59 g, 11 USC §95(g), or pay off the admitted obligations. By listing the claim as disputed you eliminate the necessity for amending the schedules prior to dismissal.

8. A claim should be listed even though you believe it may be barred by the statute of limitations.



3. Unsecured Creditors - Preliminary Schedule A-3

(Answer Every Question)

Do you owe any money for goods, services, or loans whereby no goods can be taken (do you have any unsecured creditors)? Yes No

(Don't forget doctor bills, loans from relatives, etc.)

List these creditors in alphabetical order.

FULL NAME OF CREDITOR (ASSIGNOR) AND HIS PRESENT ADDRESS	GIVE DATE YOU FIRST OWED MONEY. IF DEBT WAS FOR GOODS OR SERVICES BOUGHT OVER A PERIOD OF TIME, GIVE BEGINNING AND ENDING DATE OF PERIOD	WHAT WAS DEBT FOR?	HOW MUCH DID YOU FIRST OWE? IF GOODS OR SERVICES WERE BOUGHT OVER A PERIOD, WHAT DID YOU OWE AT THE END OF THE PERIOD?	HOW MUCH DO YOU NOW OWE INCLUDING INTEREST FEES AND CHARGES FOR LATE PAYMENTS?(A HIGH ESTIMATE)	NAME & ADDRESS OF COLLECTION AGENCY, OTHER ASSIGNEES, AND ATTORNEYS WHO ARE TRYING TO COLLECT THE DEBT	IS DEBT DISPUTED?
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COMMENT: 1. Be sure that all assignors of conditional sales contracts, etc., are listed, since many contracts are on recourse.

2. Rule 38 of the Bankruptcy General Orders requires dates when the obligations were incurred to be set forth. (However, if you believe your client may be in trouble under §17a(2) of Bankruptcy Act (11 USC §35(a)(2)) (false financial statement), it may be advisable for you to omit the dates and hope the creditor is negligent and does not ask the Referee to order the bankrupt to make an affidavit setting forth the dates. This makes it harder for the creditor to prove his false financial statement case.)

3. Remember that if the client has been involved in an auto accident as a possible defendant, it is wise if possible to wait until he has been sued. The debt will not be discharged if he files before the suit has been filed against him.

4. Get data on any finance company or bank rewrites.

5. If many of these bills are medical, inquire as to chronic illness. A delay in filing may permit the bankrupt to include other bills.

6. Make sure client has remembered to list obligations to relatives, etc., which he intends to repay. If there are many of these actually nondischargeable debts, i.e., debts the bankrupt wishes to repay, or must repay, bankruptcy may not be a useful solution.

7. Another type of actually nondischargeable loan may be one where a friend or relative has cosigned for the client, and where discharge of the client will leave the friend or relative primarily liable. Bankruptcy Act §16, 11 USC §34.



3. Unsecured Creditors - Preliminary Schedule A-3 (Continued)

(Answer Every Question)

Do you owe any money for goods, services, or loans whereby no goods can be taken (do you have any unsecured creditors)? Yes _____ No _____

(Don't forget doctor bills, loans from relatives, etc.)

List these creditors in alphabetical order.

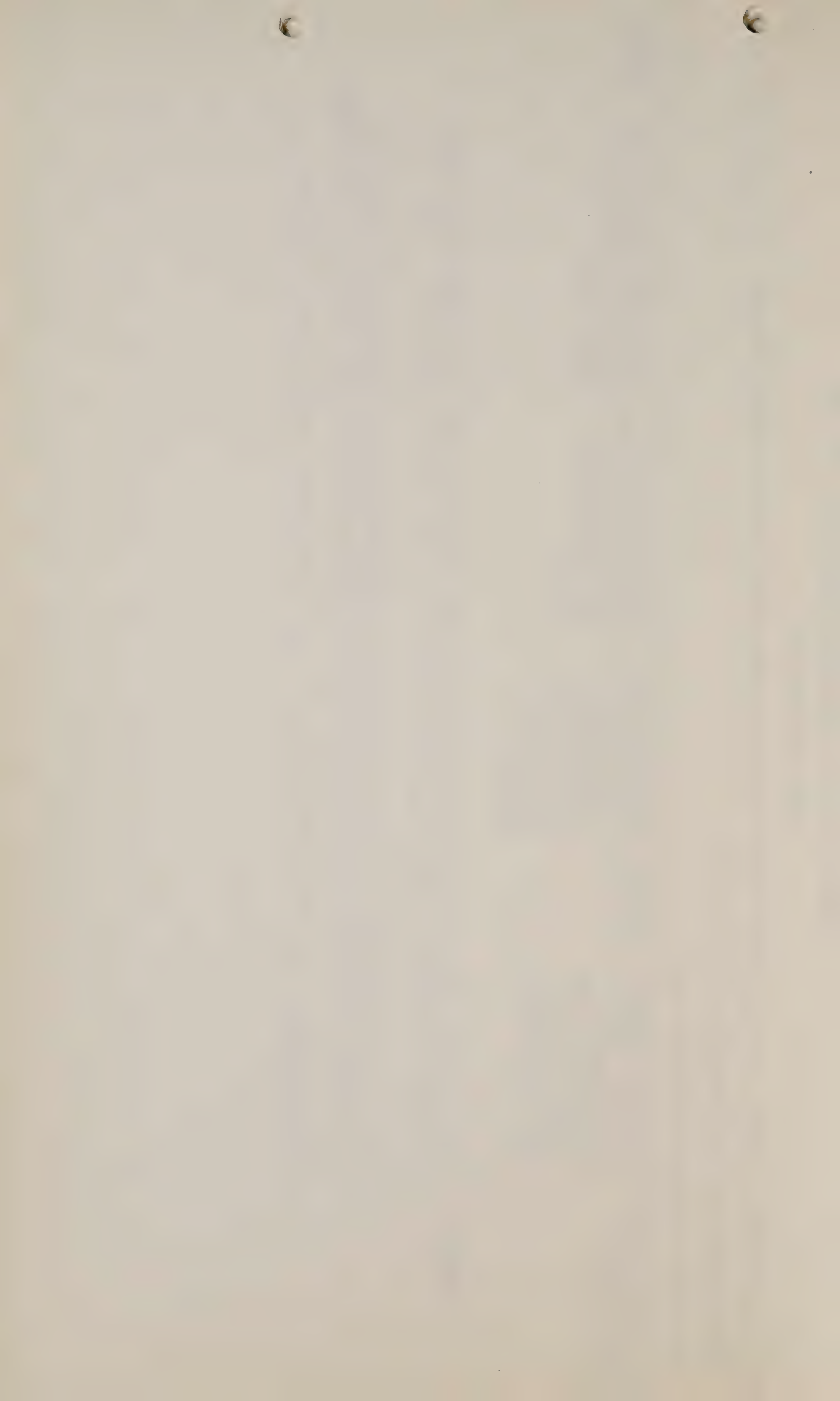
FULL NAME OF CREDITOR (ASSIGNOR) AND HIS PRESENT ADDRESS	GIVE DATE YOU FIRST OWED MONEY. IF DEBT WAS FOR GOODS OR SERVICES BOUGHT OVER A PERIOD OF TIME, GIVE BEGINNING AND ENDING DATE OF PERIOD	WHAT WAS DEBT FOR?	HOW MUCH DID YOU FIRST OWE? IF GOODS OR SERVICES WERE BOUGHT OVER A PERIOD, WHAT DID YOU OWE AT THE END OF THE PERIOD?	HOW MUCH DO YOU NOW OWE INCLUDING INTEREST FEES AND CHARGES FOR LATE PAYMENTS? (A HIGH ESTIMATE)	NAME & ADDRESS OF COLLECTION AGENCY, OTHER ASSIGNEES, AND ATTORNEYS WHO ARE TRYING TO COLLECT THE DEBT	IS DEBT DISPUTED?
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COMMENT:

The client should be questioned to determine if this situation exists, and it should be explained to him that his release does not release the cosigner. Be sure cosigner is listed as a creditor. See §9.1.23. (Cross refer to Chapter on defenses of guarantors, cosigning, etc.)

8. Recent purchases from stores or on credit cards should be listed but may be nondischargeable. Determine whether the client was contemplating bankruptcy when the purchase was made. If he was, he did not have the requisite intent to pay and the debt is therefore fraudulently obtained and nondischargeable. Bankruptcy Act §17a(2), 11 USC §35(a)(2).

9. MAKE SURE ADDRESSES ARE ACCURATE. It is very risky to list "Address Unknown" since a creditor not notified is not discharged.



-11.42

4. Other Creditors - Preliminary Schedules A-4 and A-5

Have you recently tried to pay a debt by endorsing to your creditors a check made payable to you? Yes _____ No _____

If yes, give details. _____

COMMENT: If client endorsed check and check is returned for insufficient funds or other reason, he may be liable as endorser on the check.

Have you ever promised to pay someone else's debt if he did not pay it? Have you ever cosigned for anyone?

Yes _____ No _____ If yes, list name of person(s).

COMMENT: Where a bankrupt has cosigned for another or otherwise accommodated another party, he often forgets to include this obligation in his own schedules, unless he has been dunned due to default by the accommodating party. This is particularly true where credit unions are involved.

Have you borrowed any money for someone else's benefit?

Yes _____ No _____

c. Asset Information

1. Real Property - Preliminary Schedule B-1

1. Do you own an interest in real property (land, buildings, your own home, or burial plot)? Yes _____ No _____

COMMENT: (a) Be sure where there is a residence involved, that you have examined the Homestead declaration if one has previously been prepared; or, if you draw the Homestead, be sure the receipt



has been returned from the recorder. See §9.3.30.

- (b) If property is entered here, be sure to inquire again whether there is a mortgage or trust deed on the property, and ascertain that the creditor is listed on the secured creditors list.

2. Bring in any papers relating to your interest in real property (e.g., relating to mortgages, deeds of trust, homesteads, title, and title insurance).

2. Personal Property - Preliminary Schedule B-2

1. Do you have any cash on hand (not in banks or in savings and loan)? Yes____ No____ If yes, how much?_____

2. Do you have any stocks or bonds? Yes____ No____
If yes, describe and give value._____

3. Do you have any stock in trade (inventory)?
Yes____ No____ If yes, describe and give value._____

4. List your major appliances (e.g., stove, refrigerator, TV, sewing machine, etc.) giving approximate age and value (what you could get for it if you sold it). (Indicate by underlining or circling which appliances are mortgaged or held under conditional sales contract.) _____



5. Give an estimate of the value (what you could get for it if you sold it) of the following: (Indicate by underlining or circling which are mortgaged or held under a conditional sales contract)

All your furniture: _____

All your minor appliances: _____

All your clothing: _____

All your jewelry: _____

All your other household goods (e.g., dishes, utensils, food, household tools, tools not used in business, etc.): _____

COMMENT: Advise the client when he is valuing his household goods to value them at their used value, and that this evaluation can be used against him by a secured finance company.

6. Have you any books, prints, or pictures of substantial value? Yes _____ No _____ If yes, indicate value.

7. Do you have any automobiles or trucks? Yes _____ No _____

If yes, give the year, make, model, and its value (what you could sell it for). _____

8. Do you have an interest in or own any machinery, tools, or fixtures used in your business or work? Yes _____ No _____

If yes, describe and give value (what you could sell it for). _____



9. Do you own anything else of substantial value
(e.g., sports equipment, guns, boats, photographic equipment,
etc.)? Yes _____ No _____ If yes, describe and give value
(what you could sell it for). _____

Note: See exemption checklist and material dealing
with preserving assets, in §§9.3.13, 9.3.2-9.3.11.

3. Other Sources of Money - Preliminary Schedule B-3

1. Does anyone owe you any money? Yes _____ No _____

If yes, give his name, his address, what for, and how much.

2. Do you have any insurance policies with a cash
surrender value? Yes _____ No _____

Bring the insurance policies, except health insurance policies,
with you.

3.(a) Are you suing anyone or do you have any possible
reason for suing someone for injuries or money owed to yourself
or other members of your family? Yes _____ No _____ If yes,
be prepared to give details.

(b) Do you have money in a retirement fund where you
work? Yes _____ No _____ If so, indicate name of fund and
approximate amount. _____

Have you accumulated vacation time due you? Yes _____ No _____

If so, indicate amount and approximate value. _____

Have you ever posted a cash bond? Do you expect your money to be returned? Yes _____ No _____ If so, indicate with whom bond posted and amount. _____

Do you expect to receive an income tax refund? Yes _____ No _____ If so, indicate amount expected. _____

4. Do you have any money deposited anywhere (e.g., bank deposits, saving and loan deposits, credit union or rental deposit)? Yes _____ No _____ If yes, give the following:

WHO HAS THE DEPOSIT?	THEIR ADDRESS	WHAT WAS DEPOSIT FOR?	WHAT AMOUNT WAS DEPOSITED?
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Note: See exemption checklist and material dealing with preserving assets, §§ 9.3.13, 9.3.2-9.3.11.

4. Revisions, Remainders, and Expectancies - Preliminary Schedule B-4

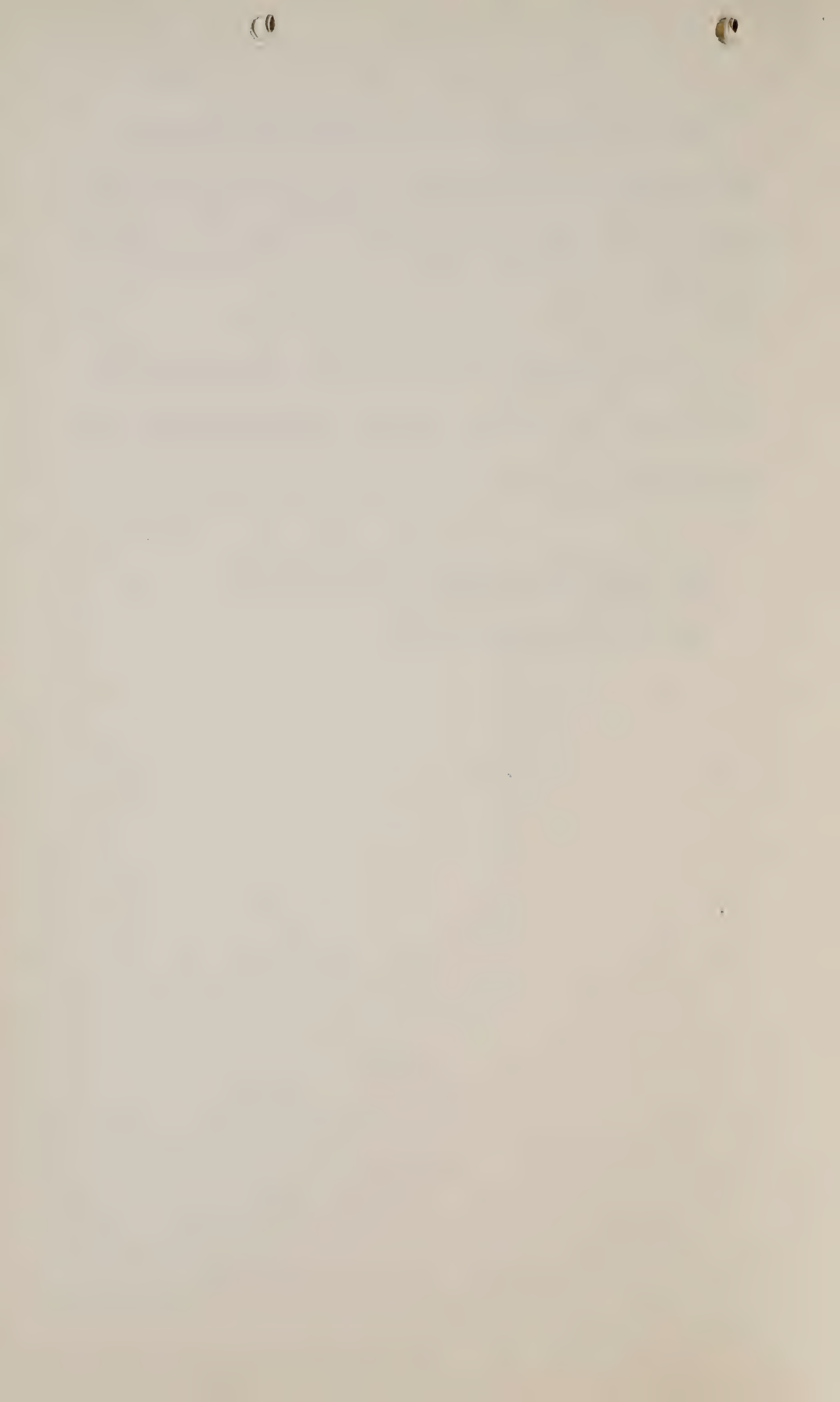
(a) Are you the beneficiary of a trust? Do you expect to inherit either money or properties in the future? Yes _____ No _____ If so, give details and value. _____

(b) Do you expect to receive a gift of more than a small amount of money or property (e.g., over \$5.09) at any time in the near future? Yes____ No____ If yes, be prepared to give details.

(c) Do you expect to receive a tax refund at the end of the year? Yes____ No____ If yes, estimate the amount as best you can. _____

5. Exemptions - Preliminary Schedule B-5

See Exemption Checklist §9.3.13.



What is your monthly take-home pay? \$ _____

How much of your take-home pay do you budget for each of the following categories?

FOOD & DRINK _____

Groceries
Milk
Bakery
Liquor
Other

CLOTHING _____

Outright Purchases
Revolving Accounts
Shoes
Cleaning
Repairing
Other

HOUSING _____

Rent or Loan Payments
PG&E
Phone
Water
Sewage
Domestic Help
Payments on washing machine, etc.
If buying home:
Taxes
Repairs & Remodeling
Garden supplies (tools, plants, etc.)
Other

CAR(S) _____

Loan payments
Insurance
Gas & Oil
Repairs & new parts
License
Traffic tickets
Other

MEDICAL _____

Doctor bills
Dental bills
Hospital charges
Insurance
Drugs & medications
Toothbrushes, etc.
Other

CHILDREN _____

School lunches
Baby sitters
Nursery school
PTA & other school affairs
Music lessons
Private tutors
Toys & birthday gifts
Other

UNION, BUSINESS, OR PROFESSIONAL _____

Commute
Dues
Tools & equipment
Subscriptions
Education
Laundry
Other

AMUSEMENTS _____

Entertainment (movies, theater, etc.)
Books
Records
Photography
Subscriptions (newspapers, magazines, etc.)
Gambling
Library fines
Other

SOCIAL & POLITICAL _____

Federal Income Taxes withheld
Social Security contributions
Federal Income Taxes paid outright
State Income Taxes
State & local taxes (other than real property)
Church
Charities
Political Donations
Other

MISCELLANEOUS _____

Vacations
Holidays
Special Family Events (marriages, etc.)
Christmas
Retirement
Life Insurance
Other insurance
Haircuts, Beauty treatments, etc.
Bank Charges
Watch and other repairs
Debts reduced to judgment
Other



E. [§9.2.16] FORM: INQUIRY CONCERNING PRIOR BANKRUPTCY

Copies: Two - original for Referee and one for file.



(Date)

_____, Referee in Bankruptcy

_____ District of _____

(Court in which client indicates he filed)

Dear Sir:

My client _____
(Name in full) _____

[Comment: Ascertain from client whether he filed in his present name]

has advised me that he filed a _____
petition in bankruptcy/application

for a _____ Wage Earners' Plan in your court
composition/arrangement

on or about _____, 19____, and that he received his _____

discharge/the plan was confirmed and completed on or about _____

_____ .

Will you please confirm the correctness of this information, as follows:

Petition filed/Plan applied for on _____

Discharge _____/Plan completed _____ on _____
granted/denied

File number _____ .

Thank you for your cooperation and prompt attention to this matter.

Sincerely yours,

(Signature of attorney)
Attorney for Bankrupt



COMMENT: If the client indicates that at any time he filed a petition in bankruptcy, the attorney should confirm this information. He should not file a new petition until he has received an answer from the court where the client previously filed. An inquiry made directly to the referee rather than to the clerk of court generally results in a more prompt response, even though all papers are returned to the clerk after discharge.



Prebankruptcy
Role of Attorney

III. PREBANKRUPTCY ROLE OF ATTORNEY

A. [§9.3.1] DISCOVERY OF NECESSARY FACTS

In order for the attorney to counsel his client properly prior to his bankruptcy filing, it is indispensable that he be aware of all the facts and factors that affect decisions at each stage in the proceedings. See §§9.2.10-9.2.16, for complete interview sheet and interviewing suggestions.

B. [§9.3.2] PRESERVATION OF ASSETS

Although the prime motivation of the bankrupt is to discharge obligations, he is equally concerned with preserving assets. It sometimes develops that bankruptcy is of little use to the debtor, even though substantial debts are discharged, because he has lost to the trustee substantial assets. Although many debtors are able to deal significantly with their creditors' schedules in proper, they are less able to cope with the asset schedules and their problems. The attorney can, therefore, often make his greatest contribution as counsel and advisor in this area. This is a particularly good area for the attorney to perform a recognizable service to his client. Determining assets, analyzing them in terms of preservation through claims of exemption or other procedures and evaluating the desirability of abandoning or postponing bankruptcy in light of asset problems are important functions of

bankruptcy counsel.

1. [§9.3.3] Nature and Role of Trustee

In order for the attorney to plan for the preservation of his client's assets, it is necessary that he be familiar with the nature and the role of the trustee. After his appointment, which generally takes place at the first meeting of creditors (see §9.4.3-42), the trustee controls the bankrupt's estate until the discharge.

a. [§9.3.4] Selection

The trustee in wage earner matters usually serves in most of the cases referred to a particular referee, so it is possible to know in advance of filing who the trustee is likely to be. Obviously, some acquaintance with the particular trustee's policies and procedures is helpful.

b. [§9.3.5] Duties

The primary duty of the trustee is to take possession and liquidate the nonexempt assets of the bankrupt on the one hand, and to examine his acts, property, and conduct on the other hand. The trustee is required to file his report of exempt property within five days of the first meeting of creditors (Bankruptcy Act §47a(6), 11 USC §75(a)(6), as supplemented by General Order 17(2)), which means that there should be no unnecessary delay in learning what exemptions are to be allowed.

The trustee is not required to take into possession nonexempt

assets that are burdensome. Assets may be burdensome because of the disproportionate costs of liquidation or the disproportionate amount of time required in order to liquidate.

Title passes to the trustee at the precise moment of adjudication. Bankruptcy Act §70a, 11 USC §110(a); Collier. §§70.01-70.02, pp 928-932.

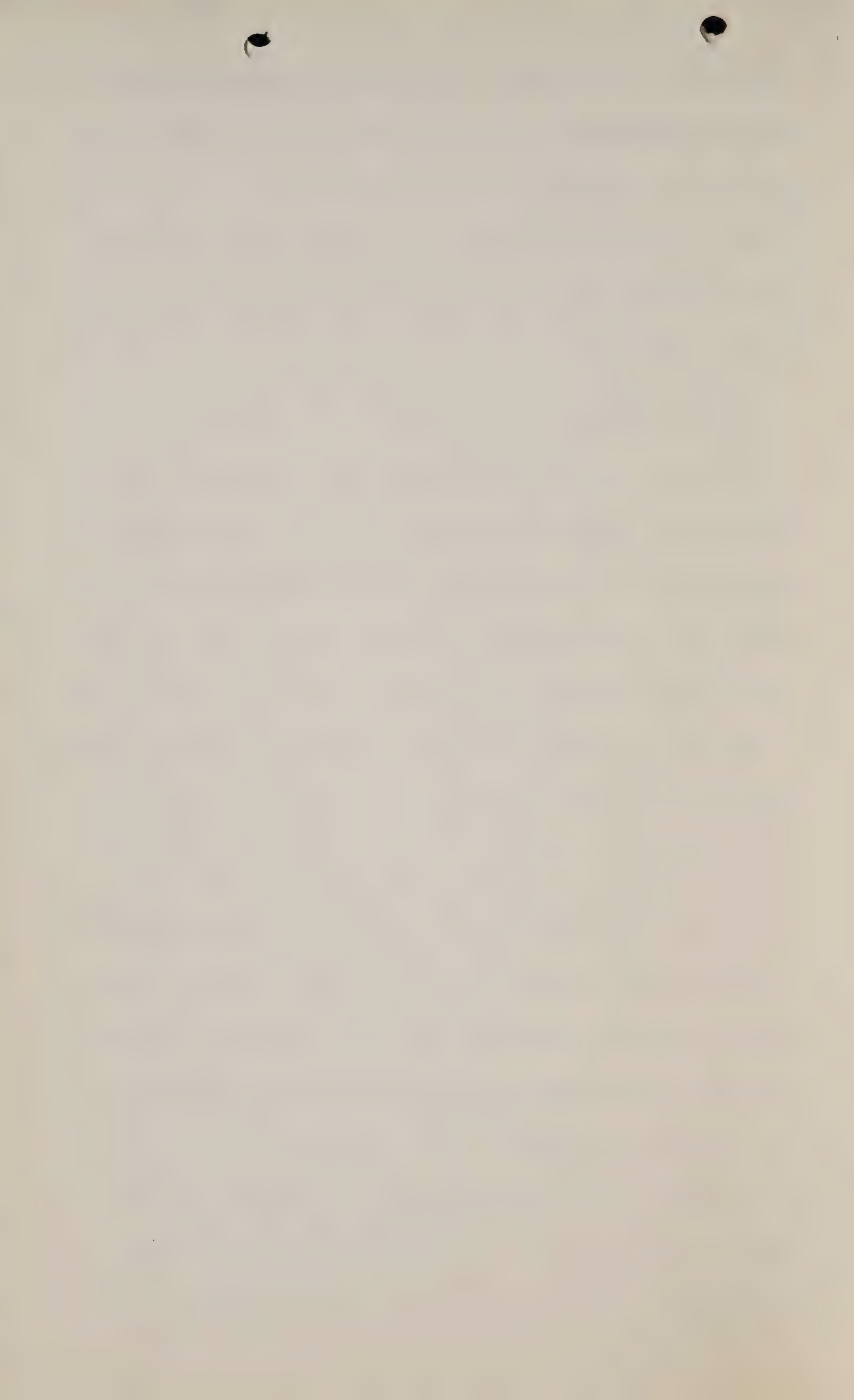
c. [§9.3.6] Powers

The powers of the trustee are formidable. He can, and frequently does, subpoena the bankrupt and others, void fraudulent and preferential transfers prior to bankruptcy (Bankruptcy Act §§60b, 67a, 70e, 11 USC §§96(b), 107(a), 110(e)), and set aside certain prebankruptcy liens. Bankruptcy Act §67c, 11 USC §107(c).

The summary jurisdiction of the bankruptcy court facilitates the handling of matters by the trustee. This makes it possible to have controversies litigated in much less time than state or federal district courts require. The trustee can file specifications for objection to discharge of any willful failure of the bankrupt to comply with lawful orders of the bankruptcy court. Bankruptcy Act §§47a(9), 14c(6), 11 USC §§75(a)(9), 32(a)(6).

d. [§9.3.7] Motivation

In addition to the trustee's desire to fulfill his duties and facilitate administration of the bankruptcy court, he is interested in maximizing the cash value of the estate since his



compensation is based on a percentage of the estate. Bankruptcy Act §48c, 11 USC §76(c).

2. Locating Bankrupt's Assets

a. [§9.3.8] Importance

The importance of locating assets prior to the filing of the petition in bankruptcy cannot be overemphasized. Proper handling of this matter serves a number of purposes. The Bankruptcy Act requires full disclosure of assets under oath, in the schedules (Bankruptcy Act §7a(8), 11 USC §25(a)(8)) and during examination at the first meeting of creditors (Bankruptcy Act §55b, 11 USC §91(b)). Failure to make full disclosure can result in criminal sanctions and in denial of discharge. See §§9.1.19.

A full inventory of assets is indispensable in assisting the bankrupt to preserve assets. An innocent failure to disclose, even though it may not result in denial of discharge or criminal sanctions, may result in loss of an exemption. The trustee is unable to set aside as exempt any property not specifically claimed exempt on schedule B-5. Bankruptcy Act §47a(6), 11 USC §75(a)(6); General Order 17. Furthermore, the bankrupt is precluded from claiming exempt any property not listed in the asset schedules. Bankruptcy Act §7a(8), 11 USC §25(a)(8).

b. [§9.3.9] Difficulties

The task the attorney undertakes is a difficult one, whether



viewed in the abstract or in comparison with the task of the trustee. For reasons of wishful thinking or the deliberate desire to secrete assets, debtors frequently fail to disclose assets to their attorney. However, the most common reason for nondisclosure is simple forgetfulness. Finally, debtors often are innocent of controlling property concepts. Frequently overlooked by debtors as assets are: (1) intangibles (e.g., causes of action, refunds of income tax overwithheld), (2) property requiring passage of title formalities, (3) property subject to encumbrances (for instance, many debtors believe they do not hold title to any real property, or any personal property for that matter, as long as they still have to make payments on it), and (4) property interests involving trust concepts. And, clients are almost never aware of the ramifications of transfers of property within four months of the bankruptcy.

3. [§9.3.10] Procedures and Techniques

The initial interview with the client must concern itself with assets. See §§9.2.10-9.2.15. Particularly helpful in this area are checklists, which can be used to avoid overlooking property of various kinds and for enumerating and not losing sight of the multitude of exemptions. See §9.3.11. Action memoranda, which are placed in each file as the need arises, can assist the attorney in following through on various matters that require specific

actions. Such checklists and memoranda are helpful, if not essential, in facilitating the handling of these cases without the expenditure of an undue amount of the attorney's time.

4. [§9.3.11] Form: Asset Checklist

Asset Checklist (short form)

A. Tangibles

1. Real Property
2. Household Furniture and Fixtures, Wearing Apparel, Ornaments
3. Automobiles, Trucks, Trailers
4. Tools of Trade
5. Guns
6. Photographic Equipment
7. Encyclopedias
8. Horses
9. Sporting Goods

B. Intangibles

1. Tax Refunds
2. S.D.I. Overpayments
3. Bank Deposits
 - a. Checking Accounts
 - b. Savings
 - c. Savings & Loan
 - d. Credit Unions
 - e. Christmas Clubs
4. Wages
5. Bonuses
6. Vacation Pay (Kalb v Berlin (5thCir 1966) 356 F2d 269)
7. Pension and Retirement Funds
8. Stock Participation
9. Provident Funds



10. Savings Bonds (Programs)
11. Personal Injury Actions
12. Life Insurance
13. Medical and Accident Insurance
14. Property Insurance
15. Inheritances

C. ANALYZING AND HANDLING ASSETS

1. [§9.3.12] Determining and Claiming Exempt Status

Anyone practicing in the field of bankruptcy must be familiar with the exemption laws, both state and federal. The variety and extent of exemption laws is so great that it should always be assumed, at the outset at least, that an exemption statute may be found for all properties under consideration. Although occasionally important, federal exemption statutes play a relatively minor role. Most California exemption statutes are found in the Code of Civil Procedure, but very important exemptions exist in the Civil Code (e.g., homesteads), Labor Code, Corporations Code, Financial Code, and elsewhere. In every case a review of an exemption checklist (see §9.3.13) is strongly recommended.

Most exemptions are automatic. That is, they require no more than a listing on the B-5 schedule. The notable exception is the homestead, where a declaration of homestead must be recorded in the county of situs prior to the bankruptcy filing. CC §§1264, 1268.

(11)

(12)

As previously noted, no exemptions can be allowed that are not claimed by setting forth a description of the asset and the relevant authority for the exemption in specific detail on schedule B-5. Bankruptcy Act §7a(8), 11 USC §25(a)(8).

2. [§9.3.13] Exemption Checklist

Exemption	Code Cite
Animals	
Cows	CCP §690.2
Horses	CCP §§690.3, 690.6, 690.7
Mules	CCP §§690.3, 690.6, 690.7
Oxen	CCP §§690.6, 690.7
Pigs	CCP §690.2
Poultry	CCP §690.9
Bedding	CCP §690.2
Beds	CCP §690.2
Bedsteads	CCP §690.2
Beehives	CCP §690.3
Bicycles (see Tools and Instruments Necessary to Carry on Trade)	
Books	CCP §690.1
(see also Professional Libraries, CCP §690.4)	
Building and Loan Ass'n Deposits	CCP §690.21
Building Materials	CCP §§690.17, 1202.1
Cabin (Miner's Cabin)	CCP §690.6
Cemetery Lot	CCP §690.51
Chairs	CCP §690.1
Clothing (see Wearing Apparel)	
Credit Union Deposits	Fin C §15406
Desks	CCP §690.1
(see Office Furniture)	
Drawings (by member of family)	CCP §690.2
Escrow or Trust Funds (not subject to execution on any claim against escrow agent)	Fin C §17410



Farming Equipment	CCP §690.3
Federal Savings and Loan Deposits	Fin C §11000
Firearms	
Guns	CCP §690.15
Rifles	CCP §690.2
Shotguns	CCP §690.2
Fire Company Equipment	CCP §690.14
Fishing Boat and Net	CCP §690.8
Food	CCP §690.2
Fuel	CCP §690.2
Gravestone	CCP §690.51
Homestead	CC §1237-1269, Cal Const art 17, §1; 43 USC §175 (exempts homesteads from prepatent debts only)
House Trailer	CCP §690.24
Household Furniture	CCP §690.2
Instruments and Chest (of surgeon, physician, surveyor, dentist)	CCP §690.4
Instruments and Tools (of optometrist, podiatrist, chiropractor)	CCP §690.4
Insurance	
Death Benefits	
Fraternal Benefit Society	Ins C §11045
Group Life	Ins C §10213
Life	CCP §690.19
U.S., State, or Local Gov't	CCP §§690.22, 690.23
Disability Benefits	
Accident	CCP §690.20
Fraternal Benefit Societies	CCP §690.25, Ins C §11045
Health	CCP §690.20
U.S., State, or Local Gov't	CCP §§690.22, 690.23
Materials Used by Notary Public	CCP §690.4
Materials Used by Searcher of Records	CCP §690.4
Mining Claim	CCP §690.6
Money deposited as security for wages of employees or itinerant merchant	Lab C §270.6



Motor Vehicles	CCP §690.24
(Special cases see CCP §§690.3, 690.6, 690.7, 690.14)	
Musical Instruments (of musician or music teacher)	CCP §690.4
Mutual Savings and Loan Deposits	Fin C §10202, CCP §690.21
Nautical Instruments	CCP §690.13
Office Furniture (of certain professionals)	CCP §§690.4, 690.14
Oil Paintings (by member of family)	CCP §690.2
Partnership Property (exempt from nonpartnership debt)	Corp C §15025(c)
Pensions (Retirement [R], Death [D], Disability [Dis])	
Annuities of Members of Armed Forces [R]	10 USC §1440
Bay Area Transit District [R, D, Dis]	Pub Util C §28896
Corporate Retirement Systems [R]	Corp C §28005
Civil Service Retirement [R, D, Dis]	5 USC §2265
CIA Retirement and Disability Fund [R, D, Dis]	50 USC §403
County Employees Retirement [R, D, Dis]	Govt C §31452
Fire Service Retirement [R, D, Dis]	Govt C §32210
Foreign Service Retirement and Disability [R, D, Dis]	22 USC §1104
Irrigation District Retirement System [R, D, Dis]	Wat C §22142
Legislators' Retirement [R, D, Dis]	Govt C §9359.3
Longshoremen's and Harbor Workers' Compensation [R, D, Dis]	33 USC §916
Medal of Honor Winners [R]	38 USC §562(c)
Municipal Utility Districts [R, D, Dis]	Pub Util C §12337
Peace Officers' Retirement [R, D, Dis]	Govt C §31913
Railroad Retirement [R, D, Dis]	45 USC §228(1)
Teachers' Retirement [R, D, Dis]	Ed C §14407
Transit Districts, Alameda and Contra Costa Counties [R, D, Dis]	Pub Util C §25337

U.S., State, and Local [R, D, Dis]	CCP §§690.22, 690.23, Govt C §21201
Pews	CCP §690.52
Piano	CCP §690.2
Pictures (Hanging)	CCP §690.2
Portraits (Family)	CCP §690.2
Prisoner's Funds (held in trust for him)	CCP §690.235
Professional Libraries	CCP §690.4
Property of Reclamation Board and Drainage District	Wat C §8537
Property Granted to Educational Foundation (exempt from debts of grantor after two years)	Ed C §31067
Property of Farmer (stay after peti- tion to judge)	11 USC §203(o)
Prosthetic and Orthopedic Appliances	CCP §690.5
Provisions	CCP §690.2
Public Assistance Aid	Welf & I C §11002
Aid to Needy Children	Welf & I C §11002
Blind Aid	Welf & I C §11002
Old Age	42 USC §407
Public Buildings	CCP §690.16
Public Personal Property	CCP §690.16
Radio	CCP §690.2
Realty of Housing Authority or Redevelopment Agency	Health & S C §§34217, 33124
Refrigerator	CCP §690.2
Safe (Belonging to Certain Profes- sionals)	CCP §690.4
Seed, Grain, or Vegetables (of Farmer)	CCP §690.3
Servicemen (court may stay execution; but not as to civilian codefendants)	50 App USC §§523, 524
Sewing Machine	CCP §690.2
Social Security	42 USC §407
State Savings and Loan Deposits	Fin C §7611, CCP §690.21
Stove	CCP §690.2
Stovepipes	CCP §690.2



Tables	CCP §690.1
Television	CCP §690.2
Tools and Instruments Necessary to Carry on Trade	CCP §690.4
Tools of Miner (Sluices, Pipes, Hose, Windlass, Derrick, Cars, Pumps)	CCP §690.6
Truck (for carrying well-drilling equipment)	CCP §690.18
Typewriter (Office Furniture)	CCP §690.4
Unemployment Benefits	Un Ins C §§988, 1342
Fraternal Organization	Ins C §11045, CCP §690.25
Longshoremen's & Harbor Workers' Compensation	33 USC §916
Railroad Workers	45 USC §352(e)
Uniforms (see Wearing Apparel)	
Veterans' Benefits	38 USC §3101
Wages	CCP §690.11
Seamen's	CCP §690.10, 46 USC §601
State or Local Gov't Employees	CCP §§710a(1), (2)
Wagon	CCP §690.7
Washing Machine	CCP §690.2.
Wearing Apparel	CCP §690.2
Seamen's	CCP §690.13, 46 USC §563
Uniforms	CCP §§690.14, 690.15
Uniforms of Waiter or Waitress	CCP §690.4
Wardrobe of Entertainer	CCP §690.4
Well Drilling Machinery	CCP §690.18
Workmen's Compensation	CCP §§690.20, 690.22, Lab C §4901

3. [§9.3.14] Converting Nonexempt Property to Exempt

If there were no elements of fraud in obtaining the property, there is no impropriety in converting nonexempt assets into exempt assets on the eve of bankruptcy. Doethlaff v Pennsylvania Mut. Life Ins. Co. (6th Cir 1941) 117 F2d 582. See Collier P6.05.

To the contrary, failure to do so in certain cases may constitute attorney malpractice. There is little doubt that the attorney's failure to see that a declaration of homestead is recorded prior to filing the bankruptcy petition is actionable by the bankrupt if he suffers any damage as a result. CITATION TO BE INSERTED.

Likewise, the attorney has a duty to make sure that cash is deposited to exempt savings and loan or credit union accounts, or into the exempt food and clothing budget. Nonexempt personal property should be sold and the proceeds converted into exempt property.

4. Eliminating Equities

a. [§9.3.15] Purpose

Property that is neither exempt nor capable of being converted into exempt status may nevertheless be preserved for the benefit of the bankrupt if it is burdensome or is rendered burdensome to the trustee. For example, a fully paid-for automobile worth \$500 wholesale is not entitled to exemption and would be claimed and sold by the trustee for benefit of the general creditors. The same automobile subject to a lien for \$500 would be abandoned by the trustee for the reason that he could not sell it for more than what he would have to pay the secured party.

b. [§9.3.16] Procedure

The methods of eliminating equity in nonexempt property include

mortgage, pledge, and assignment. See §§9.3 .17 -9. 3.20 for forms. These methods can preserve the specific property.

For example, in the case of the \$500 automobile, the debtor can obtain a loan from a third party such as a finance company and contemporaneously give security in the vehicle. The loan proceeds must be converted to exempt status. See §9.3.14.

The other methods will be discussed more fully in relation to specific problems. See §§9.3.29-9.3.51.

(1) [§9.3.17] Form: Mortgage

TO BE PREPARED



(2) [§9.3.18] Form: Pledge

Copies:

PLEDGE TO SECURE PROMISSORY NOTE

I hereby transfer and deposit with _____
as collateral security for the payment of my promissory note,
and the interest and expenses which may accrue thereon, the
following personal property, of which I am the sole owner,
the same being at my risk and expense, to wit:

In case of nonpayment of said promissory note, or the
interest thereon, when due, I hereby appoint and constitute
pledgee, his assigns, my attorney, irrevocable, with power
of substitution, to sell at any time after said note or inter-
est is due, with or without notice, at the option of pledgee,
the whole or any part of said security, either at public or
private sale at its discretion; and to deliver the same to
the purchaser or purchasers thereof. In like manner I agree
to pay on demand to pledgee, his assigns, whatever deficit may
result after applying the net proceeds of such sale to the
payment of the said principal and interest.

But in case of the payment of the said note and interest,
according to the terms thereof, then this agreement is to be
void, and the above named security is to be returned to me.

DATED: _____

(Signature)

(Typed name)

Form by Robert Ward, Attorney at Law, Oakland, California.

(3) [§9.3.19] Form: Assignment of Chose in Action

This assignment is made of _____ on _____
 _____, 19____, by _____ of _____
 _____, California, to _____
 _____, California, to _____.

This assignment hereby transfers, assigns and sets over to _____
 _____ free and clear of any claims, liens or

 encumbrances whatsoever all his right, title and interest, legal
 and equitable, in and to his _____,
 which approximates \$_____, in consideration of _____
 _____.

This assignment, though absolute, is nevertheless an assignment
 as collateral and security for the promissory note to said _____
 _____ in the amount of \$_____.

The intent hereof is to transfer to _____ said
 interest and to confer upon _____ full right and
 power in his absolute discretion to dispose of said interest at
 any time without any notice to the assignor and without advertise-
 ment by sale, public or private, or at auction, to be credited
 upon said note and any surplus over the amount due on said note
 and the expenses of sale to be paid to assignor.

In witness whereof assignor signs the day and year above set forth.

 (Signature of assignor)
 (Typed name of assignor)

I hereby consent to said assignment.

 (Signature of wife)
 (Typed name of wife)

Form by Robert Ward, Attorney at Law, Oakland, California.



(4) [§9.3.20] Form: Financing Statement--UCC I

5. Dealing With Transferred Properties

a. [§9.3.21] Legal and Other Considerations

The trustee has power to set aside and recover preferential transfers for the benefit of the estate. Bankruptcy Act §60, 11 USC §96. Preferential transfers are transfers or payments made within four months prior to filing of the petition that satisfy antecedent obligations, providing the bankrupt was insolvent at the time and the recipient knew, or had reason to know, of the insolvency.

If the transferee has knowledge of the bankruptcy within six months following the first meeting of creditors, the actual legal consequences to the bankrupt are negligible. The controversy is between the trustee and the transferee. Frequently, however, the bankrupt has a moral or personal interest in protecting the transfer. For instance, he may have paid off a longstanding loan from a close relative, and the bankrupt may have to make good the moral obligation if the trustee succeeds in setting aside the transfer.

b. [§9.3.22] Procedures

The bankrupt's control over this situation is limited. He can, of course, refrain from announcing to the transferee at the time of transfer that he is hopelessly insolvent or that he is planning to file a petition in bankruptcy. The only sure course, however, is to delay his bankruptcy filing for at least



This FINANCING STATEMENT is presented for filing pursuant to the California Uniform Commercial Code

DEBTOR (LAST NAME FIRST)		1A. SOCIAL SECURITY OR FEDERAL TAX NO.	
MAILING ADDRESS	1C. CITY, STATE	1D. ZIP CODE	
RESIDENCE ADDRESS (IF AN INDIVIDUAL AND DIFFERENT THAN 1B)	1F. CITY, STATE	1G. ZIP CODE	
ADDITIONAL DEBTOR (IF ANY) (LAST NAME FIRST)		2A. SOCIAL SECURITY OR FEDERAL TAX NO.	
MAILING ADDRESS	2C. CITY, STATE	2D. ZIP CODE	
RESIDENCE ADDRESS (IF AN INDIVIDUAL AND DIFFERENT THAN 2B)	2F. CITY, STATE	2G. ZIP CODE	
DEBTOR(S) TRADE NAME OR STYLE (IF ANY)		3A. FEDERAL TAX NO.	
ADDRESS OF DEBTOR(S) CHIEF PLACE OF BUSINESS (IF ANY)	4A. CITY, STATE	4B. ZIP CODE	
SECURED PARTY		5A. SOCIAL SECURITY NO., FED. TAX NO. OR BANK TRANSIT AND A.B.A. NO.	
NAME			
MAILING ADDRESS			
CITY	STATE	ZIP CODE	
ASSIGNEE OF SECURED PARTY (IF ANY)		6A. SOCIAL SECURITY NO., FED. TAX NO. OR BANK TRANSIT AND A.B.A. NO.	
NAME			
MAILING ADDRESS			
CITY	STATE	ZIP CODE	

This FINANCING STATEMENT covers the following types or items of property (if crops or timber, include description of real property on which growing or to be grown)

7.A Maximum amount of indebtedness to be secured at any one time (OPTIONAL).

\$

Check ☒ If applicable	A ☐ Proceeds of collateral are also covered	B ☐ Products of collateral are also covered	C ☐ Proceeds of above described original collateral in which a security interest was perfected	D ☐ Collateral was brought into this State subject to security interest in another jurisdiction
---	--	--	---	--

(Date) _____ 19__	C O D E	10. This Space for Use of Filing Officer (Date, Time, File Number and Filing Officer)
SIGNATURE(S) OF DEBTOR(S) (TITLE)		
SIGNATURE(S) OF SECURED PARTY(IES) (TITLE)		
Return Copy to		
STATE	7	
	8	
	9	
FILING OFFICER COPY		
ARD FORM—FILING FEE \$2.00		
Approved by the Secretary of State		
UNIFORM COMMERCIAL CODE—FORM UCC-1		
By LAIRD'S—Oakland		

four months following the transfer.

D. ANALYZING AND HANDLING SPECIFIC ASSETS

1. [§9.3.23] Property Under Involuntary Lien

Bankruptcy Act §67. (11 USC §107) voids any liens obtained by levy or other process within four months before the filing of the bankruptcy petition if at the time of the lien the bankrupt was insolvent. This provision is significant to the bankrupt since wage or bank account levies, which frequently bring the potential bankrupt into the attorney's office, can often be released under the authority of this section. See §9.4.29.

a. [§9.3.24] Determining Essential Facts

Determination of the controlling facts is essential. The debtor normally knows only that his paycheck or bank account has been or is about to be attached. Telephone calls will determine whether the monies are held by the employer or bank, have been transmitted to the levying officer, or paid by the levying officer to the creditor. So long as the creditor has not already received the funds, it is possible to negotiate with him for immediate release when the client is about to file bankruptcy, if the creditor has confidence that the attorney's representations are candid and the attorney moves quickly enough.

b. Negotiating Techniques

(1) [§9.3.25] General Creditors' Liens

The techniques used in some offices handling numerous bankruptcies are as follows:

Counsel informs the creditor that he will file bankruptcy within a fixed number of days and take steps to restrain disbursement of funds by the levying officer to anyone but the trustee (under the authority of Bankruptcy Act §67a, 11 USC §107(a)). The creditor, aware that the levy will be of no benefit to him, has a choice of consenting to a release to the debtor before bankruptcy or allowing the monies to pass to the trustee.

In order to achieve the former alternative, many practitioners will offer to reimburse the creditor's costs of levy or, possibly, his entire costs of suit, dependent upon the relative amounts involved, in exchange for a release.

Because of the short period of time available, negotiations must be informal and the creditor must have confidence in the attorney. If bankruptcy is not filed within the time stated, if the attorney does not follow through, if the creditor fails to give a release to ensure after filing that the funds are held by the levying officer for the trustee, or if the agreed costs are not received by the creditor, this negotiating tool will be ineffectual.

The release to the bankrupt negotiated in this manner must of course be completed prior to the filing of the petition in bankruptcy. Otherwise, the debtor will be obliged to pay the funds over to the estate.

(2) [§9.3.26] Tax Liens

Levies by taxing agencies are normally not capable of the above treatment. Bankruptcy Act §17a, 11 USC §35(a). Because the obligation is generally nondischargeable, the bankrupt's interest requires that the funds go to the taxing agency, and the best policy is to negotiate regular installment payments to the agency.

c. [§9.3.27] Real Property Liens

The real property consequences of Bankruptcy Act §67 (11 USC §107) are usually overlooked even by experienced attorneys. Although primarily intended to benefit the trustee, the Supreme Court has held that §67 is available to the bankrupt for protection of his exempt property. Thus, where the bankrupt has suffered prebankruptcy judgments that have been abstracted on his real property within four months of bankruptcy, a timely application to the bankruptcy court can remove the lien from his homesteaded property.

d. [§9.3.28] Form: Application to Remove Lien from Homesteaded Property



2. Tangible Assets

a. [§9.3.29] Exempt Real Property

The wage earner's greatest asset is normally his home. An equity of \$15,000 can be protected from the trustee. CC §§1237-1261. With the possible exception of a workmen's compensation award, no other exemption is potentially as large. As a practical matter, the homestead exemption exceeds \$15,000 because the trustee is unable to proceed unless he can benefit the estate. An equity of considerably more than \$15,000 will be of no benefit to the estate if the trustee must, as he usually must, pay real estate commissions and closing costs from the proceeds.

With so much at stake, the attorney bears the greatest responsibility to see that a valid homestead is recorded prior to the bankruptcy filing.

Good practice in regard to homestead matters is enhanced by use of a checklist. See §9.3.30.

That a homestead has been previously recorded cannot be taken for granted simply on the word of the debtor. Counsel should examine the original or a certified copy of the previously recorded homestead in light of facts he has established in his consultation with the client and, if there is any question about its validity, the previously recorded homestead should be abandoned. See abandonment form, §9.3.31.



Drafting a homestead is based upon knowledge of the controlling statutes and decisions, reference to the various forms prepared by legal scholars, and reference to commercially printed forms of reputable publishers. Many practitioners minimize the unlimited avenues of error by using printed forms, either those prepared commercially or standard forms carefully drafted and reproduced by the practitioner himself.

Selection of the proper form is critical. Homesteads have been declared invalid in recent months for failure to take into consideration the formal requirements of Civil Code §§1263, 1300-1302. Harley v Whitmore (1966) 51 CR 468, 242 CA2d 461.

Formalities must be observed, although the courts generally interpret homesteads with the view of validating them if possible. CC §4; Bankruptcy of Eade (SD Cal 1964) 237 F Supp 320. But see Bankruptcy of Morse (SD Cal 1964) 237 F Supp 579.

A common area of confusion is the problem of valuation. It would seem that the proper valuation is the gross valuation of the property at the time of the declaration; although equity valuations have been upheld. Bankruptcy of Eade, supra; Samuels v Delucchi (9th Cir 1961) 286 F2d 504. Valuations totally unrelated to any value, such as figures representing the homestead allowance of \$15,000, would appear to be subject to attack in a proper case.



A faulty legal description has been saved in at least one case (Clausseneus v Anderson (1963) 216 CA2d 171, 30 CR 772) because the drafter included the street address of the property; certainly the street address should be included in all homesteads.

Faulty recording may create more problems than faulty drafting. Because Bankruptcy Act §70 (11 USC §110) passes title to the trustee as of the date of filing, the homestead must be recorded prior to the filing of the bankruptcy in order to be effective. Every trustee in bankruptcy has discovered homesteads recorded a few minutes after the bankruptcy petition was filed, a result of the attorney's secretary mailing the homestead to the recorder at the same time she mailed the petition to court for the filing. Also not unknown to most trustees is the case in which the homestead was mailed in time but to the wrong county recorder's office. It sometimes also happens that the homestead is refused by the recorder because of lack of proper acknowledgment and is returned with sometimes disastrous results.

The only safe course to follow is to withhold the bankruptcy filing until the recording has been substantiated by counsel, usually by the recorder's receipt.

(1) [§9.3.30] Homestead Checklist

TO BE PREPARED



(2) [§9.3.31] Form: Abandonment of Homestead

Copies:



Filed: _____

County Recorder

_____ County

California

ABANDONMENT OF HOMESTEAD

_____, the undersigned, hereby declare:
I/We

1. _____ the owner of the property described below.
I am/We are

(Or)

1. We are husband and wife and are the owners of the property described below.

2. On _____, 19____, I/We filed for record in the offices of the County Recorder of _____ County, California, a Declaration of Homestead on the property located in _____ County and described as follows:

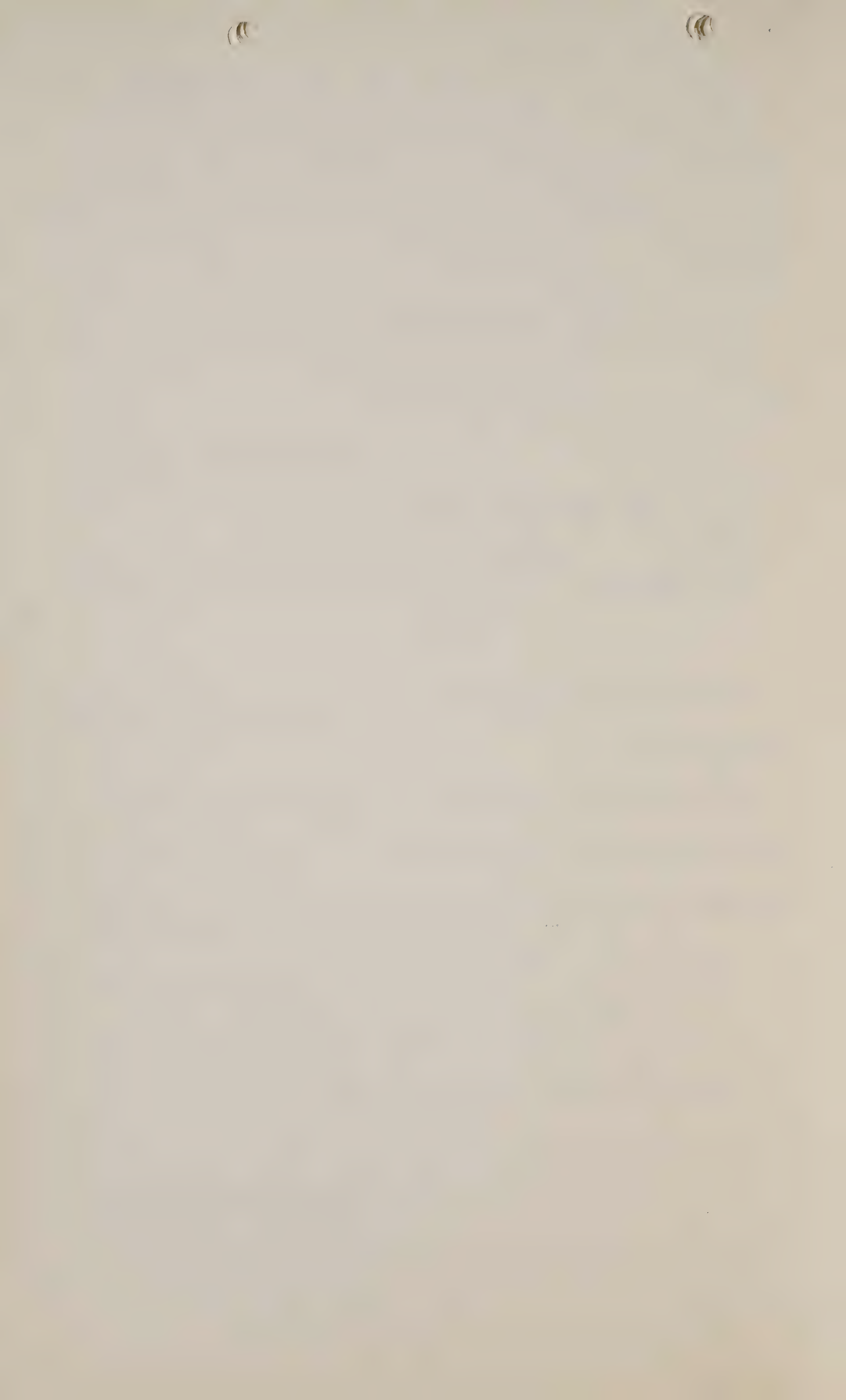
(Give legal description of property)

3. _____ hereby abandon this homestead.
I/We

Dated: _____

(Signature of declarant)
(Typed name of declarant)

(And, if husband and wife
both made original
declaration)



(Signature of wife)

(Typed name of wife)

Subscribed and sworn to before me on _____, 19__.

(Signature of notary)

(Typed name of notary)

Notary Public for the

State of California

(SEAL)

(Cowans p 837.)



(3) [§9.3.32] Form: Declaration of Homestead

Copies:



Attorney at Law -----

Filed:-----

County Recorder

----- County

California

DECLARATION OF HOMESTEAD

I/We, the undersigned, hereby declare that:

1. I am the head of a family; I am now residing on the premises described below; and I claim these premises as a homestead.

(Or)

1. We are husband and wife; the undersigned husband is the head of the family; we now reside on the premises described below; we claim these premises as a homestead.

2. My name is -----/Husband's name is -----.

3. The name of my spouse is -----/Wife's name is -----.

4. I/We estimate the actual cash value of the premises as \$-----.

5. These premises are described as follows:

(Street name and number) ----- (City) ----- County, California.

(Give legal description)



Dated: _____

(Signature of declarant)

(Typed name of declarant)

(And if husband and wife
declare)

(Signature of wife)

(Typed name of wife)

Subscribed and sworn to before me on _____, 19__.

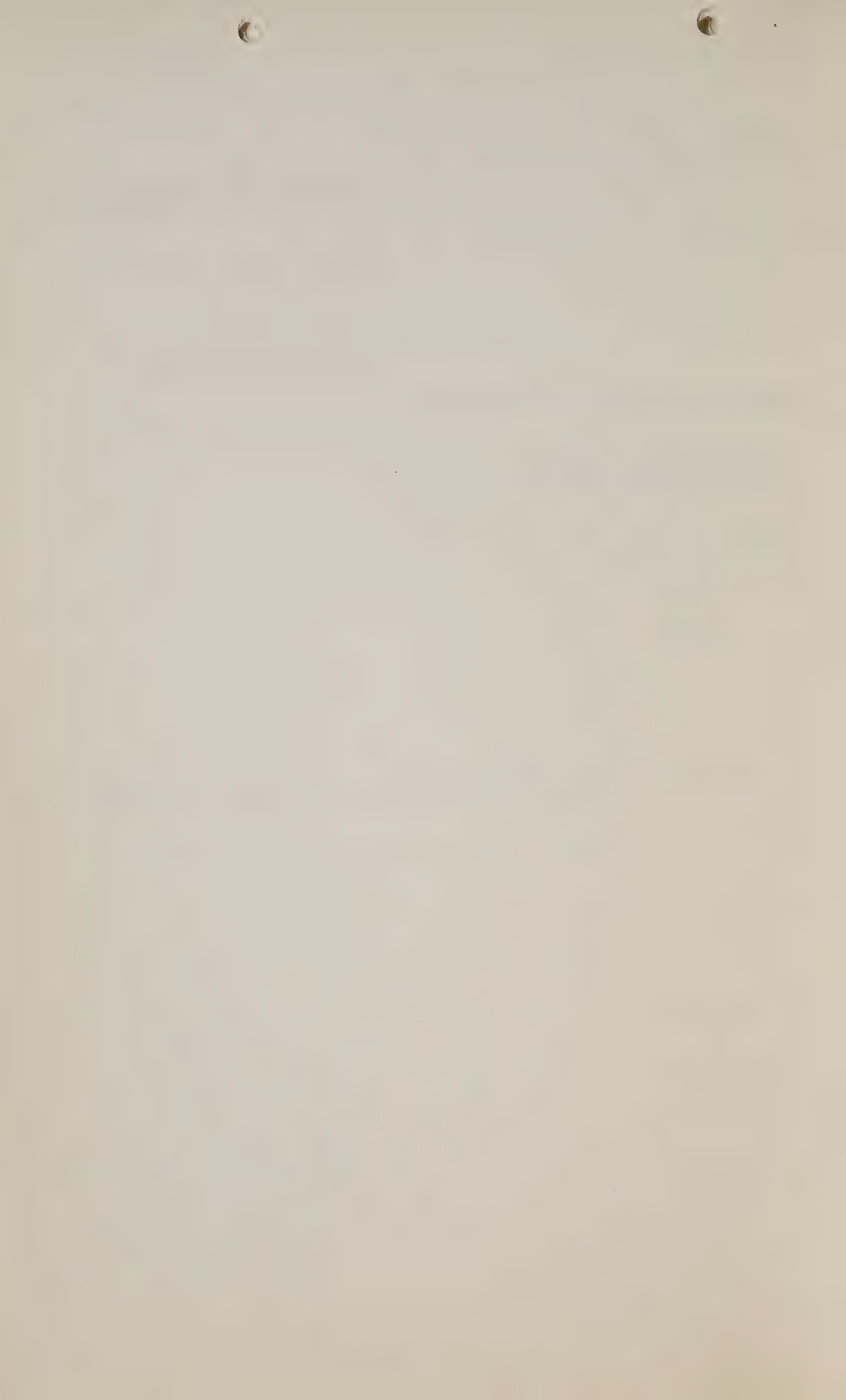
(Signature of notary)

(Typed name of notary)

Notary Public for the
State of California

(SEAL)

Form by H. H. Slate, Attorney at Law, Los Angeles, California.



b. [§9.3.33] Nonexempt Real Property

Either because the homestead is faulty or overlooked or because the property is not subject to being homesteaded, it happens occasionally that the bankrupt has nonexempt real property at the time he files bankruptcy. If the property cannot be characterized as a burdensome asset, i.e., if there is a significant equity, it may be that the property will be lost to the trustee. Estate of Aldrich, (1950) 35 C2d 20, 215 P2d 724.

In order to save the property, the bankrupt will have to raise additional funds with which to make his offer to the trustee to purchase the trustee's interest in the property. Hindman v Owl Drug Co. (1935) 4 C2d 451, 50 P2d 438. The equity in such cases is normally determined by an appraisal based on quick-sale value less all nonvoidable encumbrances. If the property is held in joint tenancy by the bankrupt and his nonbankrupt spouse and if a characterization of the property interest as community can be avoided (see CC §§172 - 172a.), the bankrupt's bargaining position is enhanced. Grolemund v Cafferata (1941) 17 C2d 679, 111 P2d 641. The market value of an undivided one-half interest in real property is considerably less than one-half of the full value, of course.

If the equity is nominal and particularly if the cost of sale of the property would in all likelihood consume the



equity, the trustee may be persuaded that the property is a burdensome asset. The bankrupt would then prepare an application for abandonment (see §9.3.34) and, if possible, obtain the trustee's written consent to the making of the order. The referee will normally sign such an ex-parte order of abandonment. See §9.3.35 . If the trustee cannot be persuaded to consent, the matter should be set for hearing before the referee. A certified copy of the order of abandonment can be recorded in order to clear the cloud on title created by the bankruptcy.

Until such time as the property is abandoned, and especially if the property is not going to be abandoned, the bankrupt should be aware that until abandonment the trustee is entitled to rents from the property. Policy varies among trustees as to the obligation of the bankrupt to pay rents to the trustee if the bankrupt is occupying nonexempt property. However, if the bankrupt rents the property prior to filing his petition, the courts have held that the rents earned by the property are clearly an asset of the bankrupt's estate and all jurisdictions hold that such rents are payable to the trustee. Bankruptcy Act §70a, 11 USC §110(a).

(1) [§9.3.34] Form: Petition for Order of Abandonment



IN THE UNITED STATES DISTRICT COURT FOR THE _____
DISTRICT OF CALIFORNIA, _____ DIVISION

IN THE MATTER

of

Bankrupt

No. _____

PETITION FOR ORDER OF
ABANDONMENT

Petitioner respectfully represents:

I.

That Bankrupt Debtor's Schedules, filed herein, show as an asset of the Bankrupt's estate, now in trustee's hands, certain real property more particularly described as follows:

(Describe property)

II.

That certain liens exist against the said real property,
to wit:

(Describe liens)

III.

That the actual fair market value of the said real property does not exceed the aggregate of claims secured thereby.



IV.

That a homestead of record covering the said premises
was recorded by _____ on _____, 19 __
in _____
(Address of filing)

V.

That some, or all, of such liens are now in default, and
that it would be to the best interest of the Debtor herein and
the creditors affected by this proceeding, if the Trustee herein
is permitted to abandon the said real property, and the said
secured creditors are permitted to foreclose thereon.

WHEREFORE, Petitioner prays the Court:

(1) For an Order authorizing Petitioner to abandon the
above described real property as an asset of the Bankrupt's
estate, and permitting such secured creditors to foreclose
thereon, or to accept and record deeds in lieu of foreclosure
thereon.

(2) For such other, further and proper relief as the
Court shall deem meet and just in the premises.

Dated: _____

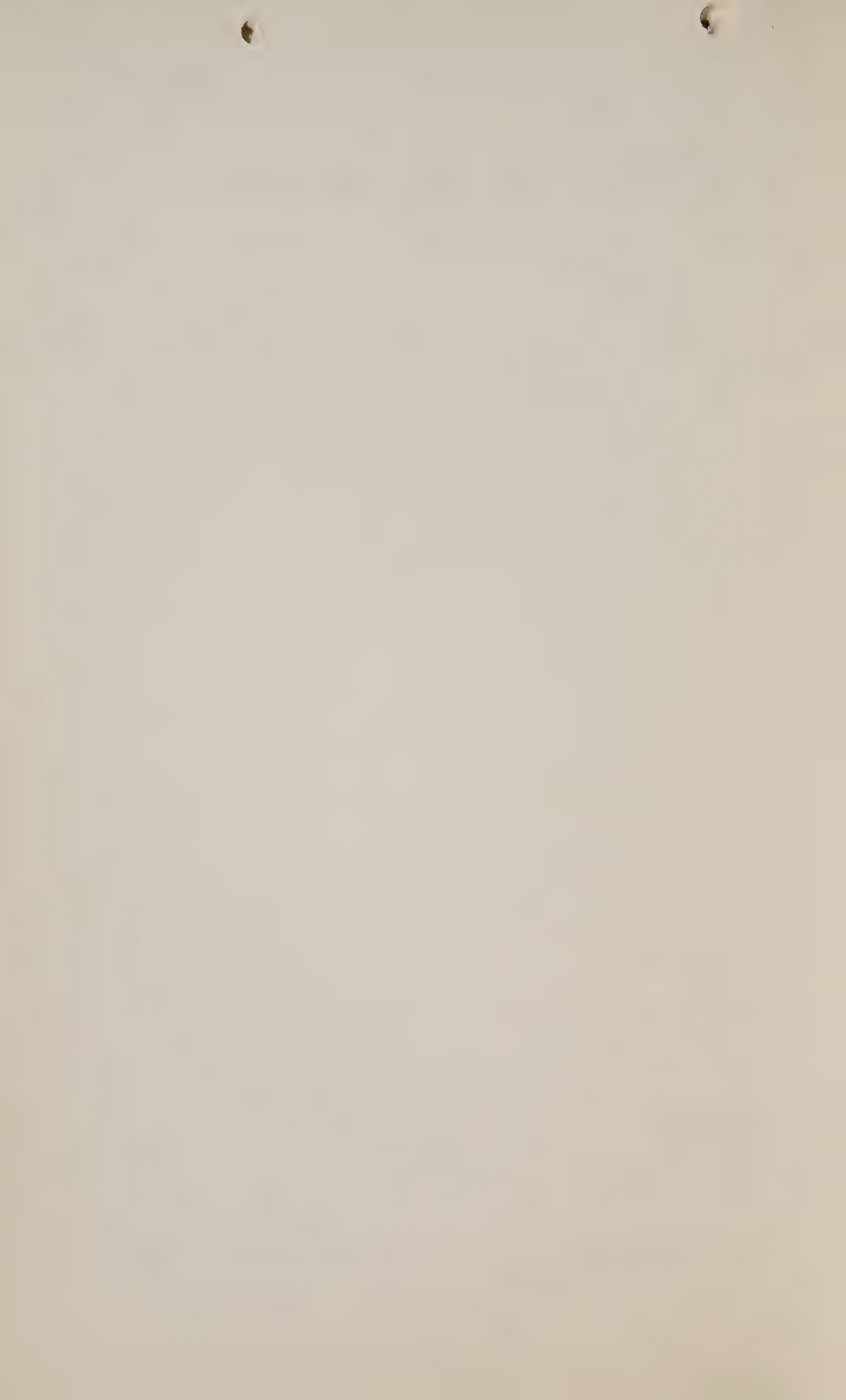
(Signature of bankrupt)
(Typed name of bankrupt)

I consent:

(Signature of trustee in bankruptcy)
(Typed name of trustee in Bank-
ruptcy)



(2) [§9.3.35] Form: Order of Abandonment



IN THE UNITED STATES DISTRICT COURT FOR _____

DISTRICT OF CALIFORNIA, _____ DIVISION

IN THE MATTER

of

No. _____

Bankrupt

ORDER AUTHORIZING TRUSTEE IN
BANKRUPTCY TO ABANDON ASSET

The Petition of _____ Bankrupt,

filed on _____, 19 __, that Trustee be authorized

to abandon as an asset of the estate of the above named Bankrupt certain real property, more particularly described in said Petition, having come on regularly for hearing before me, and it appearing that no adverse interest will be affected by the granting of said petition, and that the actual fair market value of said real property does not exceed the aggregate of the claims secured thereby, and that certain of the liens now outstanding against the said real property are now in default, and that it would be to the best interest of the estate of the above named Bankrupt if such Petition is granted.

IT IS ORDERED, that the said Trustee be, and he is hereby, authorized to abandon that certain real property described in the above mentioned Petition as an asset of the bankruptcy estate.

Dated: _____

(Signature of Referee)
Referee in Bankruptcy



c. Personal Property(1) [§9.3.36] Household Furniture and Fixtures, Wearing Apparel, and Ornaments of the Person

This basic exemption seldom causes controversy. It should be hard to conceive of any wage earner filing bankruptcy without claiming an exemption for part or all of the items in this category. However, a number of bankrupts filing in proper and even a few filing with benefit of counsel overlook this important exemption. See Hing v Lee (1918) 37 CA 313, 174 P 536.

(2) [§9.3.37] Automobiles

Code of Civil Procedure §690.24 exempts automobiles with a value not exceeding \$350. This is a common source of trouble because attorneys often read this to mean an equity of \$350 rather than a gross value of \$350, which is an incorrect interpretation of the law. See Bankruptcy of Fox (SD Cal 1936) 16 F Supp 320. The confusion no doubt arises because the homestead exemption is an equity exemption. See Bankruptcy of Eade (SD Cal 1964), 237 F2d 320. Since the trustee is often not in a position to obtain a retail price for automobiles, the value of the automobile for exemption purposes is sometimes considered to be the wholesale value and reference to such guides as the Kelley Blue Book are usually reliable. But see Wade v Rathbun (1937) 23 CA2d Supp 758, 67 P2d 765.



Sometimes imaginative counsel will attempt to obtain an exemption for a vehicle with greater than \$350 value by asserting the vehicle to be a tool of trade (CCP §690.4). See Lopp v Lopp (1962) 198 CA2d 474, 18 CR 338. Even though salesmen need a car in their work, and virtually all wage earners need a car to get to and from work, it is doubtful that this exemption will stand up unless the wage earner is a peddler as specifically mentioned in the exemption statute (CCP §690.7).

(3) [§9.3.38] Tools of Trade

This exemption (CCP §690.4) should not be overlooked in any case in which the wage earner owns property which he commonly uses or is required to use in his occupation. The primary limitation would be the amount and extent of tools absolutely necessary to the particular trade. For instance, a cobbler obviously would be entitled to claim as exempt his bench and his hammer. However, he might not be entitled to an exemption of several thousand dollars worth of machinery. See Bankruptcy of Mitchell (1894) 102 C 534, 36 P 840.

(4) [§9.3.39] Guns

A surprising number of wage earners possess pistols, rifles, and shotguns. The exemption statutes relate to specific rifles and shotguns which are exempt (CCP §690.2), plus firearms which



they are required by law to carry (CCP §690.15). In addition, the tools of trade exemptions (CCP §§690.3-690.4) may be applicable.

(5) [§9.3.40] Photographic Equipment

Unless the equipment can be exempt as a tool of trade (CCP §690.4), there is no exemption statute relating to photographic equipment. Frequently, of course, such equipment is encumbered beyond its value by a dealer who made the sale, or is encumbered to a chattel mortgage holder beyond its value. If it is free and clear, and no tool of trade exemption is available, the property should be pledged or sold, and the amount received up to \$1,000, placed in exempt building and loan association shares to protect its value or to prevent the proceeds of its sale from passing to the trustee. See §9.3.18 for pledge form.

(6) [§9.3.41] Encyclopedias

In many cases, encyclopedias are sold on conditional sales contract and the balance owing is more than their value. But conditional sellers frequently will not assert their rights in such cases for various reasons: it may be uneconomical or against company policy for collection practice; losses may be absorbed by deductions from commission salesman; some sales may have been made by representations that cast doubt on the validity of the debt. In such cases, some trustees will take



possession of the encyclopedias for liquidation on behalf of the estate unless there is claimed an exemption as a part of a professional library under CCP §690.4. It is even more likely that the trustee will act, of course, if the set is sold on open account. [REDACTED] OR: [REDACTED]

(7) [§9.3.42] Sporting Goods

Wage earners often hold title to boats, trailers, skis, camping equipment, golf clubs, and the like. No exceptions protect such property, so the only limitation on the trustee is the burdensome asset concept. If these properties are not subject to liens up to their value, counsel should consider a pledge or mortgage. See §9.3.15- 9.3.18.

3. Intangible Assets

a. [§9.3.43] Income Tax Refunds

The greatest source of funds to bankruptcy estates of wage earners is the refund due from Internal Revenue Service when income tax is over-withheld. Often



wage earners file with their employers less than their full exemptions with a view toward forced savings. Commendable as this may be in most instances, it can result -- when bankruptcy intervenes -- in substantial sums, passing to trustees in bankruptcy.

This is so because Bankruptcy Act §70a, 11 USC §110(a), passes title of all properties to the trustee as of the filing. Until recent years, it was considered that refund claims passed to the trustee only when bankruptcy was filed after the close of the taxable year. Thus, if bankruptcy was filed on the last day of the taxable year the refund did not pass to the trustee because the refund would not be fixed until the end of the year, -- i.e., at midnight that day. Bankruptcy of Sussman, (3rd Cir 1961), 289 F2d 76.

But if the same bankrupt filed the day after the close of the taxable year, the refund did pass to the trustee because the refund was fixed even though not determined until his return was filed.

The generally accepted rule today is that title to the refund passes to the trustee no matter when bankruptcy is filed, although if before the end of the taxable year it must be prorated. Segal v Rochelle, 382 US 375, 15 L Ed 2d 428, 86 S Ct 511 (1966). Administrative problems and the de minimus rule however, normally preclude trustees from asserting claims



when Bankruptcy is filed early in the taxable year.

Until even more recently, counsel could do little more than advise their clients to hold off filing until the refund has been received and disposed of. A recent Ninth Circuit case

Danning v Mintz, (9th Cir 1966), 367 F2d 304.

lends support to the practice of assigning the expected refund as security for attorney's fees or other contemporaneous consideration, such as advances of funds. Compliance with the Uniform Commercial Code is required. See §9. for form.

If the client has had more than one employer during the taxable year, he may be entitled to a refund on State Disability overpayments made by the employer on his behalf or FICA withheld. These problems -- and their solutions -- parallel those of tax refunds.

b. [§9.3.44] Bank Deposits

Although question number 4 of Statement of Affairs, Form No. 2, Official Forms, requires under oath a listing of all bank accounts standing in the bankrupt's name within two years, a substantial number of bankrupts overlook the fact that they have an account. When pressed, they indicate that they "only" have a checking account and they never have anything in it.

Such innocence frequently leads to assets for the trustee. Checks drawn on the account do not constitute an assignment and outstanding checks are disregarded. The account balance as of



the filing date passes to the trustee Everett Judson, (1913)

228 US 474, 57 L Ed 927, 33 S Ct 568 .

Bankrupts also overlook or disregard savings bank, savings and loan, credit union, and Christmas Club accounts. Of these, only certain savings and loan and credit union accounts are exempt. See exemption checklist §9.3.13. These exemptions may be claimed only if the existence of the accounts is known to counsel so that these assets may be properly scheduled.

If the bankrupt has received wages which would be exempt under one of the wage exemptions, see §9.3.13, these exempt wages may be traceable into otherwise nonexempt accounts; but the burden of tracing is on the bankrupt. Carter v Carter (1942), 55 C A 2d 13, 130 P2d 186. However, the safest course is to close the nonexempt accounts before filing and dispose of the proceeds. The attorney should confirm personally that accounts are in fact closed.

c. Incidents of Employment

(1). [§9.3.45] Wages

A vast array of property rights exist as direct and incidental employment benefits. The most obvious benefit, wages, is subject to an absolute exemption as to one-half of wages earned within thirty days. CCP §690.11.



(2). [§9.3.46] Pensions and Retirement Funds

Virtually all governmental pensions, whether derived from governmental employment, social security or old age assistance, are exempt (CCP §§690.22 - 690.23) and the most common private employer retirement funds and benefits also qualify. (Corp C §28005) See exemption checklist §9 .

There appears to be no exemption, however, for private employee retirement benefits that do not come within the provisions of the Retirement Systems Law. (Corp C §§28000 - 28501)

(3) [§9.3.47] Stock Participation Plans

Many large employers offer stock participation plans to employees of long standing. Usually they provide for contributions by the employer in proportion to the employee's contributions. Though not statutorily exempt, these plans frequently contain spendthrift trust features which place them outside the reach of creditors and trustees in bankruptcy. The extent of the spendthrift trust protection, apparently, is limited to the contribution of the employer. CC §859; see Nelson v California Trust Co. (1949), 33 C2d 501, 202 P2d 1021.

(4) [§9.3.48] Provident funds

Provident funds are a form of retirement benefit, which are customarily exempt under Corp C §28005, subject to spendthrift trusts, or both exempt and subject to trust. The protection of the trust would probably extend only to the employer contribution.



Particular types of wages are subject to other statutory exemptions, e.g., wages of federal, state and local employees (CCP §690.22), seamen and fishermen (CCP §690.10). See exemption checklist §9.3.13.

The full exemption for necessities provided by the second paragraph of CCP §690.11 is rarely available in bankruptcy because the trustee stands in the position of any creditor listed in the schedules whose obligation was incurred for the common necessities of life. However, the problem of preventing wages paid before the filing date from falling into the hands of the trustee seldom arises if the bankrupt is properly advised by counsel not to have any cash on hand at the time of filing. Problems do arise with regard to wages earned but unpaid, and with regard to bonuses and vacation pay. Occasionally this problem may be handled by seeking an advance from the employer, delaying filing until the benefits have been paid, or giving an assignment for present consideration. However, often such assets do fall to the trustee. Policy among trustees varies. Some trustees will waive such assets, while others make every effort to convert them to cash for the bankruptcy estate.

3). [\$9.3.49] Savings Bond Programs

The federal government and some private employers encourage payroll check-offs for the purchase of savings bonds.

There seems to be no exemption for such deductions apart from the basic 30 day wage exemption. See exemption checklist

\$9. .

d. [\$9.3.50] Personal Injury Actions

Bankruptcy often is precipitated by an accident involving serious personal injuries. The cause of action in favor of the bankrupt is an asset. If the accident was non-industrial, such a claim is non-exempt. See exemption checklist, under Workmen's Compensation. \$9. . It is therefore possible, in the absence of foresight by the attorney, for an asset of considerable value to pass to the trustee.

Bankruptcy Act §70 (11 USC §110) provides that:

The trustee of the estate of a bankrupt . . . shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition . . . to all of the following kinds of property wherever located . . . (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial



) process against him, or otherwise seized,

impounded or sequestered

A cause of action which has already been filed may be levied upon. CCP §688.1.

It is therefore important, if this asset is to be preserved, that filing the bankruptcy precedes filing the personal injury action. (Carmona v Robinson (9th Cir. 1964) 336 F.2d 518.) If the damage action has been filed, the attorney may seek to dismiss without prejudice if there is no risk of the statute of limitations running on the action. However, some referees might question this practice. If the action has been filed and may not safely be dismissed, perhaps bankruptcy should be avoided.

e. [§9.3.51] Insurance

There are few persons today who do not own, or have a beneficial interest in, life, medical, accident or property insurance, and it is incumbent upon counsel for the bankrupt to see that such interests are not overlooked.

Life, health and accident insurance exemptions are numerous (see exemption checklist §9.3.13) and, in the case of life insurance, generous as well. See Cowans, ...
§§561-566.

However, the life insurance exemptions are not unlimited, and pitfalls exist where the annual premiums exceed \$500 per



year. In such situations, counsel should either have his client borrow the full cash value and convert the proceeds to exempt assets, or he should claim exempt only those policies (whose annual premiums are within the limitations) that have value.

There are no property insurance exemptions.



A. PREPARING PETITION AND SCHEDULES

1. [§9.4.1] Forms

There is no more important task undertaken by the bankruptcy attorney than the careful and accurate preparation of the papers to be filed. These include: 1. the petition (see §9.4.6); 2. the statement of affairs (see §9.4.7); 3. the liability schedules (see §§9.4.8-10); 4. the asset schedule (see §§9.4.11-13); 5. the summary of debts and assets (see §9.4.14); and 6. petition to pay filing fee in installments when applicable (see §9.4.20).

2. [§9.4.2] Where Available

Printed official bankruptcy forms as required by General Order 38 are available from the following firms:

[LIST FIRMS]

In most cases handled in the legal aid offices the short forms, which combine more than one debt schedule on a page and more than one asset schedule on a page, are completely adequate. For samples of these forms, see §§9.4.6-14.

3. [§9.4.3] Copies

It is advisable to prepare five copies of each form. Three copies will be sent to the Clerk of the United States District Court. One should be kept for attorney's files, and one should be given to the client.



4. [§9.4] Checklist

Points that must be carefully checked when filing are:

- a. Forms must be typed or carefully written out, without abbreviation or interlineation. See General Order 5.
- b. All three copies submitted to the clerk must be signed by the petitioner. This necessitates a total of 54 signatures, 18 per set, as follows:

- (1) Petition - two signatures required
- (2) Statement of affairs - two signatures required
- (3) Schedules A-1 - A-4 - one signature per schedule
- (4) Schedule A-5 - two signatures, one for A-5 and a second for the oath to schedule A
- (5) Schedules B-1 - B-5 - one signature per schedule
- (6) Schedule B-6 - two signatures, one for B-6 and a second for the oath to schedule B
- (7) Summary of debts and assets - one signature required

Note: Failure to have petitioner sign in all places may result in having the papers returned.

- c. All three copies of papers submitted to the Clerk must be notarized. This necessitates a total of 12 notarizations, 4 per set, on the petition, statement of affairs, oath to schedule A, and oath to schedule B.

Rule 11 of the Federal Rules of Civil Procedure provides that, unless otherwise specifically stated in the statute, a pleading

need not be verified, but may simply be signed by ^{ch}the attorney, or by the unrepresented party. The 1959 amendment of Bankruptcy Act §18c, 11 USC §41(c), retained the oath requirement for petitions while eliminating it for all other pleadings. See H.R. Rep.No. 1142, 86th Cong., 1st Sess. (1959). When the federal rules call for verification of pleadings requesting certain kinds of relief, however, such a requirement probably will also apply in bankruptcy. See, e.g., Fed R Civ P 65(b).

d. If a petition to pay filing fee in installments is submitted, two signatures of the petitioner and one notarization are required.

e. Papers are customarily assembled with the petition on top (unless a pauper's oath accompanies the filing, in which case that is on top), followed by the statement of affairs, then the A schedules, the B schedules, and finally the summary.

f. Northern District of California -- does not permit use of colored cover and backing sheets.

Central District --

Southern District --

Eastern District --



g. Filing fees are paid by cash, cashier's check, or money order rather than by the client's personal check.

h. For information with regard to later filing of statement of affairs or schedules, see §§9.4.25-28.

i. Papers are filed with the Clerk of the United States District Court, not a referee in bankruptcy. See Cowans §808.

j. Be sure to evaluate the factors discussed in §9.2.15, question 4c of Preliminary Statement of Affairs, that apply to the time of filing, and to take the prefiling steps (see §9.3.2) necessary to preserve the client's assets.

k. Once a voluntary petition is filed, the filing itself is an adjudication as well as an application for discharge. There is no retraction, once the filing has been made. See Bankruptcy Act §18f, 11 USC §41(f); Colliers ¶¶18.20, Cowans §§792-796.

5. [§9.4.5] General Instructions by the Clerk of the Court

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

General Instructions by the Clerk of the Court
Regarding the Filing of Voluntary Bankruptcy Petitions

FORMS

A voluntary bankruptcy proceeding is started by filing certain forms with the Clerk of the U.S. District Court.

These forms are: PETITION
SCHEDULES
STATEMENT OF AFFAIRS

Source

They may be bought at stationery stores which sell legal forms.
They will be sold to you as loose pages consisting of four copies of each page.

Assembly

You must assemble these pages into four complete sets.
Three of these sets (EACH EXECUTED AS AN ORIGINAL) will be filed with the Clerk. The remaining set is to be kept by you.



Sets

The pages in each set are to be fastened into a cover in the following arrangement:

Petition in Bankruptcy (on top)
 Summary
 Schedules A
 Schedules B
 Statement of Affairs
 COVER (on bottom)

Installment payment

If installment payment of the filing fee is proposed, then four pages of another document must also be bought, called Petition for Leave to File Without Prepayment. [See §9.4.20.]

One copy of this Petition for Leave would then be placed as the TOP document of each set (on top of the Petition in Bankruptcy).

Husband and wife

Husband and wife can not join in the same Petition. Local court rules require them to file separate documents under separate covers, and pay separate fees.

FILLING IN FORMS

These forms call for much detail. Read them carefully. It is recommended that legal assistance be obtained.

Ink

Use ink, not pencil.

Carbons

If you use carbon paper, BE SURE TO PRINT HEAVILY so that the third filed copy will be legible.

DO NOT SIGN WITH CARBONS. Each of the three filed sets must be signed separately and notarized separately.

Title of Court

Insert the title of this Court on the documents where needed.

The title is: UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 _____ DIVISION

Case title

Insert the name of petitioner (your name if you are the debtor), in the case title after the words: "In the Matter of" on the documents where needed.

Name

THE FULL FIRST AND LAST NAME, and MIDDLE NAME OR INITIAL, of the petitioner must be stated on the Petition.

In the unusual case where initials are the true name, so state (in parentheses).

Local court rule requires that the Petition must set forth all assumed names, trade names, and other names or designations by or under which the debtor has been known or has conducted any business, occupation, etc. within the six years next preceding the filing.



Creditors

List all creditors with names and addresses fully stated.
FAILURE TO LIST A CREDITOR AND A DEBT ACCURATELY MAY
PREVENT DISCHARGE OF THAT DEBT.

Answers

If the answer to any question is "None", so state.

Signing and Notarization

Do not sign with carbons. Each of the three filed sets must be signed separately all the way through, including any inserted sheets. DO NOT OVERLOOK PLACES FOR SIGNATURE (usually at the bottom of pages. On oath pages there are two places for signature). Each of the three filed sets must be notarized as an original. All oaths on EACH of the sets must be executed. Do NOT use a certificate under penalty of perjury. The oath form must be used.

BE SURE THE NOTARY'S SIGNATURE AND SEAL ARE ON ALL OATHS
IN ALL THREE FILED SETS.

FEES (See separate sheet for instructions re installment payments)
The filing fee in ordinary bankruptcy is \$50 for each estate (person).

Remittance

The fee is payable: Clerk, U.S. District Court.
If the wrong payee is on the remittance it can not be accepted.

Fee must be money order, cashier's check, certified check, cash, or check of the attorney. THE PERSONAL CHECK OF THE DEBTOR IS NOT ACCEPTABLE UNLESS CERTIFIED.

Be sure check is signed.

ADDRESS OF CLERK, U.S. DISTRICT COURT, for filing Petition

At Los Angeles: 231 U.S. P.O. & Courthouse, Los Angeles-90012
(Central Division) Telephone 688-3653.

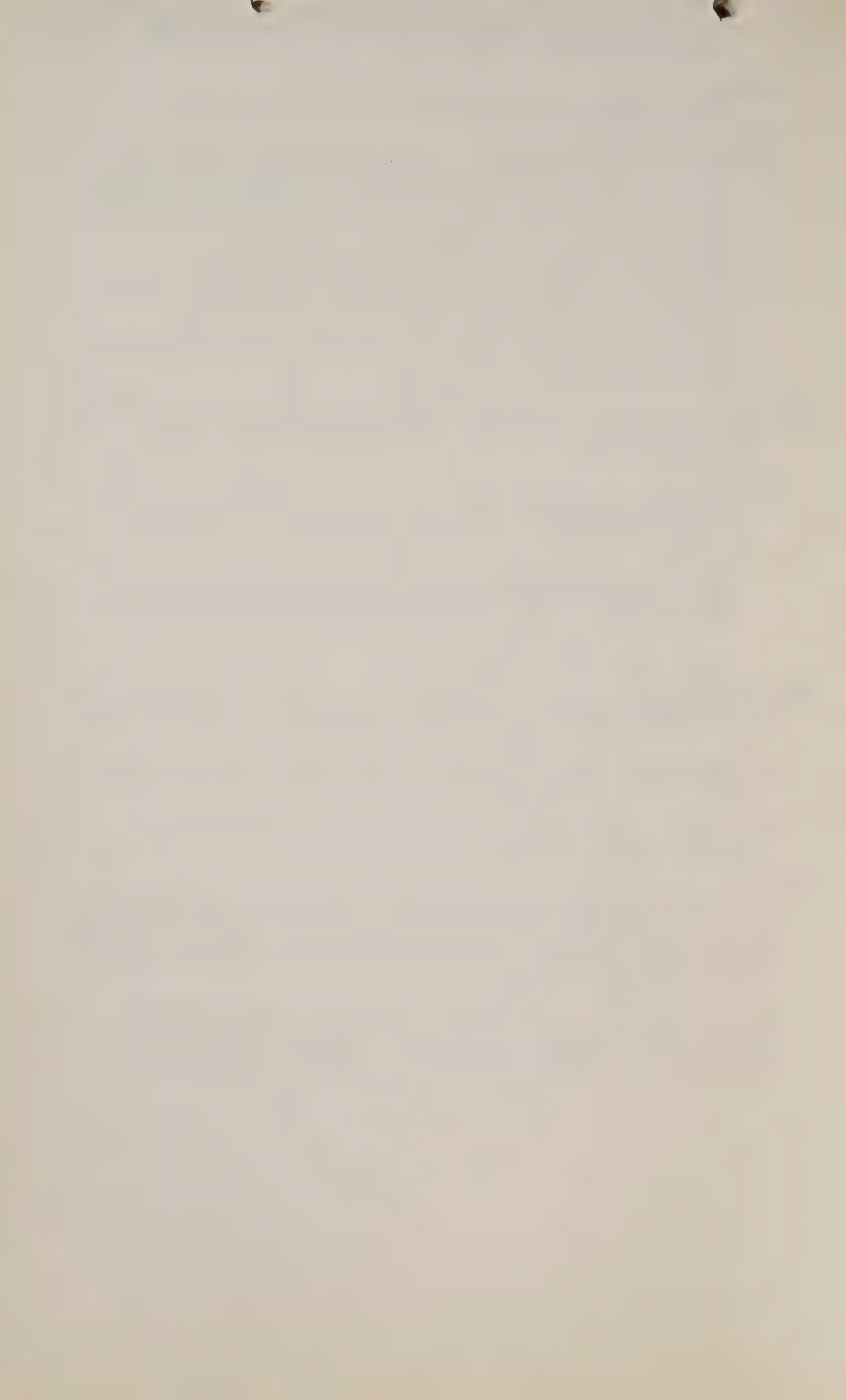
At San Diego: 207 U.S. Customs & Courthouse, San Diego-92101
(Southern Division) Telephone 234-6211.

At Fresno: 202 U.S. P.O. & Courthouse, Fresno-93721
(Northern Division) Telephone 237-8570.

REFEREE

After the Petition in Bankruptcy is filed, it is referred by the Clerk to a Referee in Bankruptcy. The Referee's office will then contact Petitioner. Subsequent dealings will be with the Referee and the clerks of his office, and not with the Clerk of the U.S. District Court.

For information about a PENDING case contact the Referee's office. For information about a CLOSED case, contact the Clerk of the U.S. District Court. (After a case is closed the Referee sends all papers to the Clerk for storage).



COMMENT: These instructions are provided to bankrupts in the Central District of California (formerly Southern District). While most of the statements are applicable in all District Court jurisdictions, it is wise to ask the local District Court if there are any special procedures to follow.

2. [§9.4.6] Annotated Official Form: Debtor's Petition



(CLERK'S STAMP)

Name _____

Address _____

Telephone: _____

Attorney for Petitioner

DEBTOR'S PETITION

In the United States District Court

For the _____ District of _____, _____ Division.

COMMENT: Ascertain proper division (if District Court divided into divisions). Transmission to the wrong division may result in the petition being returned by the clerk of court, with attendant costly delay.

IN THE MATTER OF

IN BANKRUPTCY

No. _____

Bankrupt.

COMMENT: List all names by which client has been known, e.g., John H. Doe a/k/a Jack Doe a/k/a "Butch" Doe, dba Jack's Cigar Store. This avoids the problem of the creditor who claims he dealt only with "Butch" Doe and never heard of John H. Doe.

TO THE HONORABLE JUDGES of the above entitled Court:

The petition of _____, residing at No. _____ Street, in _____, County of _____, State of _____, by occupation a _____, and (1) _____, respectfully represents:

1. Your petitioner (2) _____ at _____, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

COMMENT: Determine jurisdictional facts. (Did client actually reside where he has stated for a longer portion of the six months immediately preceding filing in the district.)

Confirm accuracy of client's statement of occupation. This may be relevant in claiming an exemption for "tools of his trade."

Confirm accuracy of client's address. Client must be notified to attend first meeting and other hearings or he may lose his discharge. If there is a possibility that he will be leaving his present address, either because of eviction or other reasons, be sure the court is notified immediately of the change of address and that arrangements are made for mail to be forwarded.



2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

X (Signature of petitioner) _____
(Typed name of Petitioner.)

(Signature of attorney) _____
(Typed name of attorney) Attorney.

STATE OF _____ }
COUNTY OF _____ } ss.

I, _____, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

X (Signature of petitioner) _____
(Typed name of Petitioner.)

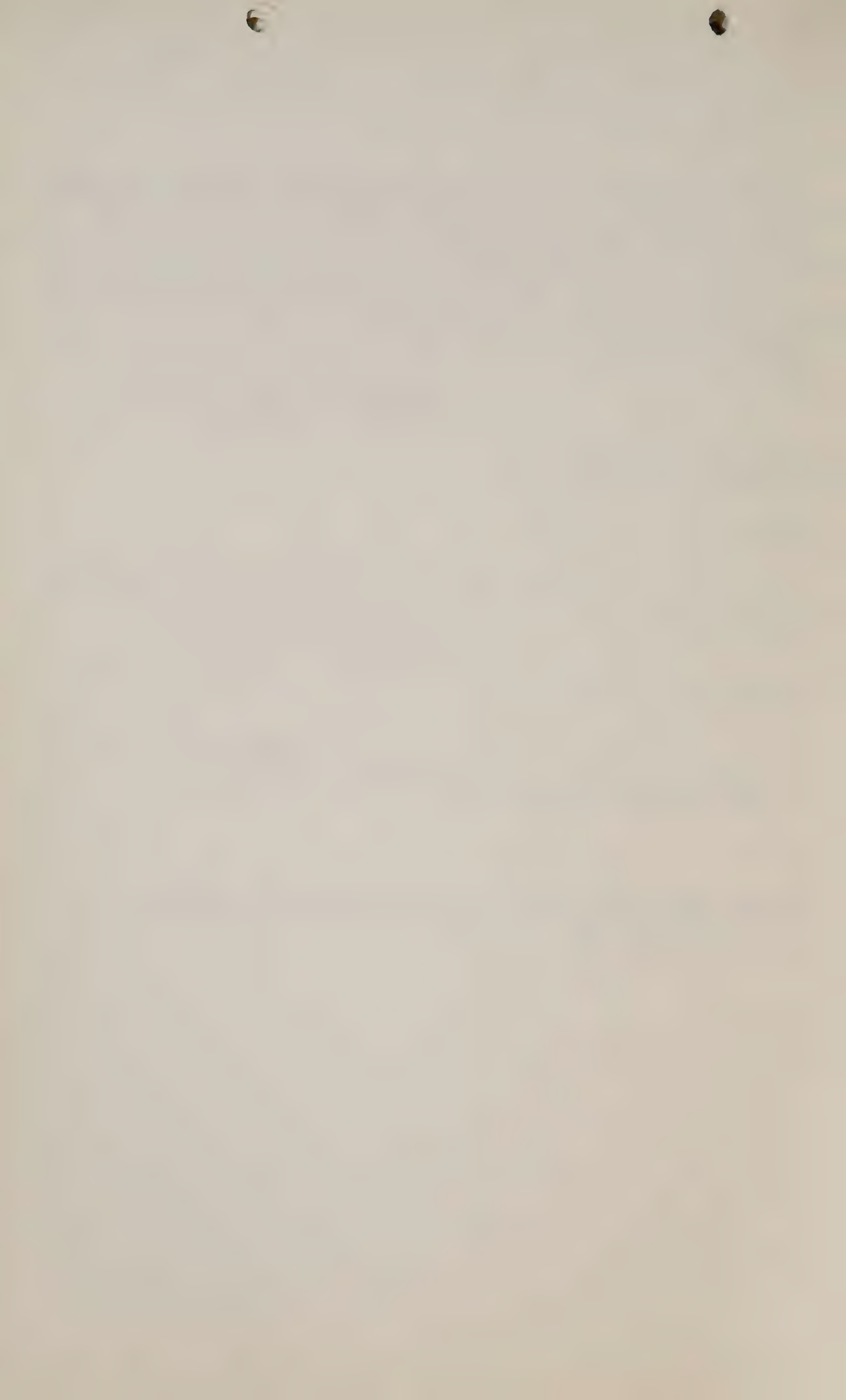
Subscribed and sworn to before me this _____ day of _____, 19_____.

(Official character.)

(1) Insert the words "employed by _____" or engaged in the business of _____"

(2) Insert the words "has had his principal place of business" or "has resided" or "has had his domicile."

COMMENT: Make sure client has signed in both places marked with X on petition and that document is properly notarized.
See Cowans §§797, 1162.



NOTE — Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.
The term "original petition," as used in the following questions, shall mean the petition filed under section 3b of chapter III, section 322 of chapter XI, section 422 of chapter XII, or section 622 of chapter XIII.
Proceedings shall be entitled "In Bankruptcy," "In Proceedings for a Composition or Extension," an Arrangement," a Real Property Arrangement," or a Wage Earner Plan," as the case may be. Rule 3 Paragraph 4.
In proceedings under chapter VIII, X, XI, XII, or XIII, of the Act, unless and until the debtor is adjudicated a bankrupt he shall be referred to as a "debtor."

STATEMENT OF AFFAIRS. (For Bankrupt or Debtor Not Engaged in Business) Official Form 2

In the United States District Court

For the **District of** **Division**

In the matter of

No.

In

Bankrupt Debtor

1. Name and residence.

a. What is your full name?

b. Where do you now reside?

c. Where else have you resided during the six years immediately preceding the filing of the original petition herein?

Full street address, city, county, and state are necessary. Use these addresses to check for previous bankruptcies and also as a clue to possible mortgage obligations.

2. Occupation and income.

a. What is your occupation?

b. Where are you now employed?
(Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed.)

If more than one job is presently held, all should be listed. Check for consistency with petition. If specific figures are not available, estimates should be made and so labelled.

c. Have you been in partnership with anyone, or engaged in any business, during the six years immediately preceding the filing of the original petition herein?
(If so, give particulars, including names, dates and places.)

d. What amount of income have you received from your trade or profession during each of the two years immediately preceding the filing of the original petition herein?

Gross and not net income should be listed.

e. What amount of income have you received from other sources during each of these years?
(Give particulars, including each source, and the amount received therefrom.)

Include unemployment, disability, pension income, medical benefits, etc., even though they are not income from a tax standpoint.

3. Income tax returns.

a. Where did you file your last federal and state income tax returns, and for what years?

State on form if no return was filed. Name of office where return filed is necessary if there was a return.

4. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein?
(Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash or other valuables, within the two years immediately preceding the filing of the original petition herein?

(Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and, if surrendered, when surrendered, or, if transferred, when transferred and the name and address of the transferee.)

5. Books and records.

a. Have you kept books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein?

Not generally required of wage earner, but helpful if available, e.g., cancelled checks, bank statements.

b. In whose possession are these books or records?
(Give names and addresses.)

c. Have you destroyed any books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein?
(If so, give particulars, including date of destruction and reason therefor.)

6. Property held in trust.

a. What property do you hold in trust for any other person?

(Give name and address of each person, and a description of the property and the amount or value thereof.)

7. Prior bankruptcy or other proceedings; assignments for benefit of creditors.

a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein?

(Give the location of the bankruptcy court, the nature of the proceeding, and whether a discharge was granted or refused, or a composition, arrangement or plan was or was not confirmed.)

b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee?

(If so, give the name and location of the court, the nature of the proceeding, a brief description of the property, and the name of the receiver or trustee.)

c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein?

(If so, give dates, the name of the assignee, and a brief statement of the terms of assignment or settlement.)

8. Suits, executions and attachments.

a. Have you been party plaintiff or defendant in any suit within the year immediately preceding the filing of the original petition herein?

(If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

b. Has any execution or attachment been levied against your property within the four months immediately preceding the filing of the original petition herein?

(If so, give particulars, including property seized and at whose suit.)

9. Loans repaid.

a. What repayments of loans have you made during the year immediately preceding the filing of the original petition herein?

(Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship.)

10. Transfer of property.

a. What property have you transferred or otherwise disposed of during the year immediately preceding the filing of the original petition herein?

(Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

11. Losses.

a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the original petition herein?

(If so, give particulars, including dates, and the amounts of money or value and general description of property lost.)

Note that any proceeding under Bankruptcy Act should be listed, including a Chapter XIII proceeding.

Note that this is a very broad section. The transfer can be for value, or a gift, or a repossession. See Annotated Interview Sheet, question 17, §9.2.15.

X(Signature of Bankrupt (or Debtor))
(Typed name of Bankrupt (or Debtor))

State of.....
County of.....

55. Make sure bankrupt has signed in both places marked with X.

I, ... the person who
subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained
are true and complete to the best of my knowledge, information, and belief.

X(Signature of Bankrupt (or Debtor)).
(Typed name of Bankrupt (or Debtor).)

Subscribed and sworn to before me this.....day of....., 19.....

102nd Cavalry

Make sure document is notarized.

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Schedule A—STATEMENT OF ALL DEBTS OF BANKRUPT.

Schedule A-1.

Statement of all creditors to Whom Priority is Secured by the Act.

Claims which have priority.	Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated).	When and where incurred or contracted.	Whether claim is contingent, unliquidated or disputed.	Nature and consideration of the debt, and whether incurred or contracted as partner or joint contractor and, if so, with whom.	Amount due or claimed.
							\$ Cts.
a Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt, to an amount not exceeding \$600 each, earned within three months before filing the petition.							
b Taxes due and owing to (1) The United States. (2) The State of (3) The county, district or municipality of State of						List name of government agency, address, type of tax, period for which due, and amount due. Note 1966 amendment to Bankruptcy Act §17a(1) (11 USC §35(a)(1)) permitting discharge of tax debts older than three years. Tax debts incurred within three years are nondischargeable, so get as much information as possible to be sure taxing authority gets as much as possible from available assets.	
c (1) Debts owing to any person including the United States, who by the laws of the United States is entitled to priority. (2) Rent owing to a landlord who is entitled to priority by the laws of the State of accrued within three months before filing the petition, for actual use and occupancy.						Not all debts to government agencies are priority claims. See Bankruptcy Act §64a(5), 11 USC §104(a)(5). If uncertain, check applicable federal statute. Bankrupt's listing as priority is not determinative. List SBA, FHA, VA with local office that processed loan. California statutes do not create a rental priority, and no priority is created by the Act. This question is significant only if bankrupt in last three months resided in rental priority jurisdiction.	
Total,							

See Cowans §§799-802, 1165.

X(Signature of petitioner) Petitioner.
(Typed name of petitioner)

Schedule A-2.

CREDITORS HOLDING SECURITIES.

Make sure bankrupt has signed.

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Act of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.]

Reference to ledger or voucher.	Names of creditors.	Residences (if unknown that fact must be stated).	Description of securities.	When and where debts were contracted, and nature and consideration thereof.	Whether claim is contingent, unliquidated or disputed.	Value of Securities.	Amount due or claimed.
			Addresses should be specific.	Examples Include: Chattel mortgage Conditional sales contract Realty mortgage Liens (judgment, attachment, landlord's, attorney) Pledges Trust deeds Security interest (UCC) Other		\$ Cts.	\$ Cts.
NOTES: 1. Always attempt to find addresses if possible to avoid creditor claiming debt to be nondischargeable under Bankruptcy Act §17a(3) (11 USC §35(a)(3)). Never list "address unknown" if it can be found by checking a local telephone book. 2. Under Com C §9105(h) all security interests are "security agreements." However, many of the obligations may have been incurred prior to enactment of the UCC or may have been incurred in another jurisdiction, and it may be wise to list them as they appear on the contract. 3. Fair market value free of lien is important so that the trustee can determine if there is any equity in the property that may be available to the bankrupt's estate.							
Total,							

See Cowans §§799-802, 1166.

Schedule A-3. CREDITORS WHOSE CLAIMS ARE UNSECURED.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher	Names of creditors.	Residences (if unknown, that fact must be stated)	When and where contracted.	Whether claim is contingent, unliquidated or disputed.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount due or claimed	
	Remember to Check list: Assignors on conditional sales contracts Pending litigation against client					\$	Cts.
Notes: Judge Cowans recommends listing in alphabetical order, if only from point of view of convenience in rechecking to see if a creditor has been omitted. This is also an aid to referee and trustee. See annotated interview sheet, Preliminary Schedule A-3, §9.2.15. If additional pages are necessary, see §9.4.15.							

Total,

X(Signature of bankrupt)
(Typed name of bankrupt) Petitioner.
Make sure petitioner has signed.



Schedule A-4. Liabilities on Notes or Bills Discounted Which Ought to be Paid by the Drawers, Makers, Acceptors, or Indorsers.

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, acceptors, or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars shall be stated as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher.	Names of holders as far as known.	Residences (if unknown, that fact must be stated).	Place where contracted.	Whether claim is disputed.	Nature and consideration of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount due or claimed.	
						\$	Cts.
Ascertain if client has endorsed a check made out by another, and given it in payment to someone.							

Total,

See Cowans §§799-802, 1168. X(Signature of bankrupt) Petitioner.
(Typed name of bankrupt)

Schedule A-5. ACCOMMODATION PAPER. Make sure petitioner has signed.

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.]

Reference to ledger or voucher.	Names of holders.	Residences (if unknown, that fact must be stated).	Names and residences of persons accommodated.	Place where contracted.	Whether claim is disputed.	Whether liability was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount due or claimed.	
							\$	Cts.
List all obligations on which bankrupt was cosigner or endorser, not merely those where the party primarily liable is in default.								

Total,

OATH TO SCHEDULE A

X(Signature of bankrupt) Petitioner.
(Typed name of bankrupt)
Make sure petitioner has signed.

UNITED STATES OF AMERICA
State of
County of

I, ss. the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Make sure petitioner has signed in 3 places. X(Signature of bankrupt) Petitioner.
(Typed name of bankrupt)
Subscribed and sworn to before me this day of, 19

[Official character.]

See Cowans §§799-802, 1169. Make sure document is properly notarized.

Schedule B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

Schedule B-1.

REAL ESTATE.

Location and Description of all real estate owned by debtor, or held by him, whether under deed, lease or contract.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated value of debtor's interest.	
			\$	Cts.
Possible types of interests include: Property held in fee Property held in fee subject to....mortgage, trust deed Leases Options on real property Property owned jointly with another party or parties	NOTE: List type of encumbrance, not amount.	Doublecheck with Schedule A-2 to be sure encumbrance is listed. NOTE: Description must be adequate for trustee to locate property. If the property will be listed again in Schedule B-5, when a homestead is declared, a more detailed description can be included there with cross-reference.		

See Cowans §§803, 1170.

Total,

X(Signature of bankrupt) _____ Petitioner.
(Typed name of bankrupt) Make sure petitioner has signed.

Schedule B-2.

PERSONAL PROPERTY.

A. Cash on hand.	Client should have little or no cash on hand at filing.	\$	Cts.
B. Negotiable and non-negotiable instruments and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately)	Stocks, etc. should probably be assigned for <u>present</u> value.		
C. Stock in trade, in business of at of the value of			
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person.	General listing is usually sufficient for ordinary types of assets, e.g., clothing, divan, etc., but specific listing for antique or other unique asset.		Value property at <u>used</u> value. The attorney should attempt to correlate statement with assertions of value made in financial statements to loan companies. Client must be questioned closely to get this data since statements are rarely available.
F. Books, prints and pictures.			
F. Horses, cows, sheep, and other animals (with number of each)			
Automobiles and other vehicles.	List make, model, style, and series.		
H. Farming stock and implements of husbandry.			
I. Shipping, and shares in vessels.			
J. Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated.			
K. Patents, copyrights, and trademarks.			
L. Goods or personal property of any other description, with the place where each is situated.			

NOTE: Check listing in this schedule against exemption list (Schedule B-5).

Total,

Schedule B-1 and B-2.

X(Signature of bankrupt) _____ Petitioner.
(Typed name of bankrupt) Make sure petitioner has signed.

See Cowans §§803, 1171.

Schedule B-3.

CHOSSES IN ACTION.

A. Debts due petitioner
on open account.

\$

Cts.

B. Policies of insurance.

NOTE: Not just life insurance, but any policy for which a
refund will be received on cancellation.

C. Unliquidated claims of
every nature, with their
estimated value.

Examples include:

IOU's from friends, retirement fund interests, refund
claims, claims of bankrupt arising from lawsuits already filed,
vacation pay owing, cash bonds outstanding.

D. Deposits of money in
banking institutions and
elsewhere.

Examples include:

Bank deposits, savings and loan deposits.

Total,

Schedule B-4. Property in Reversion, Remainder, or Expectancy, Including Property Held in Trust for the Debtor or Subject to Any Power or Right to Dispose of or to Charge.

[N. B.—A particular description of each interest must be entered, with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

GENERAL INTEREST	PARTICULAR DESCRIPTION	ESTIMATED VALUE OF INTEREST.	
Interest in land. Personal property. Property in money, stock, shares, bonds, annuities, etc. Rights and powers, legacies and bequests.	Entries on this schedule are very rare in the wage earner bankruptcy of the type filed by legal aid offices. If there are no assets of this type, client should indicate "None."	\$	Cts.
PROPERTY HERETOFORE CONVEYED FOR BENEFIT OF CREDITORS	Assignments for benefit of creditors are also extremely rare in the case of a wage earner. This type of remedy is used almost exclusively in business bankruptcies.	TOTAL, AMOUNT REALIZED AS PROCEEDS OF PROPERTY CONVEYED.	
Portion of debtor's property conveyed by deed of assignment, or otherwise, for the benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, as far as known to debtor.		\$	Cts.
ATTORNEY'S FEES. Fees or sums paid to counsel, and to whom, for filing fees or costs and for services rendered or to be rendered in this bankruptcy.			

See Cowans §1173; annotated interview sheet, Schedule B-4 Total, §9.2.15 X(Signature of bankrupt)
Schedule B-5. Make sure petitioner signed. (Typed name of bankrupt) Petitioner.
Property Claimed as Exempt From the Operation of the Act of Congress Relating to Bankruptcy.
[N. B.—Each item of property must be stated with its valuation, and, if any portion of it is real estate, its location, description and present use.]

Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption.	Notes:	VALUATION	
		\$	Cts.
Property claimed to be exempt by State laws, with reference to the statute creating the exemption.	Bankruptcy Act does not create exemptions; they are claimed on this schedule if created by other statutes.		
	Make sure items on this schedule are listed on other applicable asset schedules.		
	List specific code citation relied upon in claiming exemption of particular item.		

See Cowans §§803, 1174. Total, X(Signature of bankrupt)
Make sure petitioner has signed. (Typed name of bankrupt) Petitioner.

Schedule B-6. Books, Papers, Deeds and Writings Relating to Debtor's Business and Estate.
The following is a true list of all books, papers, deeds and writings relating to petitioner's trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in petitioner's possession or under petitioner's custody and control, or which are in the possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or advantage; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

BOOKS.
DEEDS. Examples: Residence deeds, cemetery lot deeds.
PAPERS. Examples: Checkbook, cancelled checks, bank statements, contracts, insurance policies.

OATH TO SCHEDULE B X(Signature of bankrupt) Petitioner.
Make sure petitioner has signed. (Typed name of bankrupt)
UNITED STATES OF AMERICA
State of... ss. I, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.
County of...
Make sure petitioner has signed 4 times. X(Signature of bankrupt) Petitioner.
Subscribed and sworn to before me this... (Typed name of bankrupt)
day of..., 19... [Official character.]

Make sure document is properly notarized.
See Cowans §1175.

SUMMARY OF DEBTS AND ASSETS.
[From the statements of the debtor in Schedules A and B.]

Schedule A—	1-a	Wages.....			
Schedule A—	1-b (1)	Taxes due United States.....			
Schedule A—	1-b (2)	Taxes due States.....			
Schedule A—	1-b (3)	Taxes due counties, districts and municipalities.....			
Schedule A—	1-c (1)	Debts due any person, including the United States, having priority by laws of the United States.....			
Schedule A—	1-c (2)	Rent having priority.....			
Schedule A—	2	Secured claims.....			
Schedule A—	3	Unsecured claims.....			
Schedule A—	4	Notes and bills which ought to be paid by other parties thereto.....			
Schedule A—	5	Accommodation paper.....			
		Schedule A, Total.....			
Schedule B—	1	Real Estate.....			
Schedule B—	2-a	Cash on hand.....			
Schedule B—	2-b	Negotiable and non-negotiable instruments and securities.....			
Schedule B—	2-c	Stock in trade.....			
Schedule B—	2-d	Household goods.....			
Schedule B—	2-e	Books, prints, and pictures.....			
Schedule B—	2-f	Horses, cows, and other animals.....			
Schedule B—	2-g	Automobiles and other vehicles.....			
Schedule B—	2-h	Farming stock and implements.....			
Schedule B—	2-i	Shipping and shares in vessels.....			
Schedule B—	2-j	Machinery, fixtures, and tools.....			
Schedule B—	2-k	Patents, copyrights, and trade-marks.....			
Schedule B—	2-l	Other personal property.....			
Schedule B—	3-a	Debts due on open accounts.....			
Schedule B—	3-b	Policies of insurance.....			
Schedule B—	3-c	Unliquidated claims.....			
Schedule B—	3-d	Deposits of money in banks and elsewhere.....			
Schedule B—	4	Property in reversion, remainder, expectancy or trust.....	Enter total from middle of Schedule B-4.		
Schedule B—	5	Property claimed as exempt.....	Do not include total from Schedule B-5 in summary column. These assets are already listed.		
Schedule B—	6	Books, deeds and papers.....	Books, etc., need not be valued.		
		Schedule B, Total.....			

X(Signature of bankrupt)
(Typed name of bankrupt)

Debtor

6. [§9.4.15] Additional Pages for Schedules

If the printed form does not provide sufficient space, it is proper to attach an additional sheet, noting on the original schedule that you are so doing, and noting on the additional sheet that it is a "continuation of Schedule__." Insert the additional sheet immediately following the applicable schedule. It is wise to use a sheet of paper the same size as the schedule, and to head the sheet with the bankrupt's name in addition to the name of the schedule. Be sure the bankrupt signs the additional sheet. See Cowans §§807, 1177.



C. FILING AND OTHER POSTPREPARATION PROCEDURE

1. [§9.4.17] Form: Client's Affidavit

Copies: Two -- Original sent to client and one for file.



AFFIDAVIT OF

(Name of affiant)

I hereby certify that

1. I have read all the papers that will be filed by my attorney. These include (a) the petition, (b) the statement of affairs, (c) the schedules of debts, (d) the schedules of assets, and (e) the summary of debts and assets, and

(Add when applicable)

(f) the list of creditors.

2. I have signed all these papers in the places marked for my signature.

3. To the best of my knowledge and belief, all the information on these documents is true, complete, and accurate.

4. I have listed all my assets of which I have any knowledge.

5. I have listed everyone to whom I owe anything.

(Add when applicable)

[6.] I understand that (a) alimony and support obligations, (b) tax debts (except those more than three years old when no fraud was involved), (c) intentional tort obligations (Describe), (d) debts incurred by use of false financial statements or fraud, and (e) debts I have not listed, or have listed without proper addresses of creditor will not be discharged by this bankruptcy proceeding.



(For use when client is filing in forma pauperis)

[7.] I understand that if I do not complete payment of the \$50 filing fee within the period set by the court, all of the debts I have listed will be nondischargeable forever.

(Hand written by client)

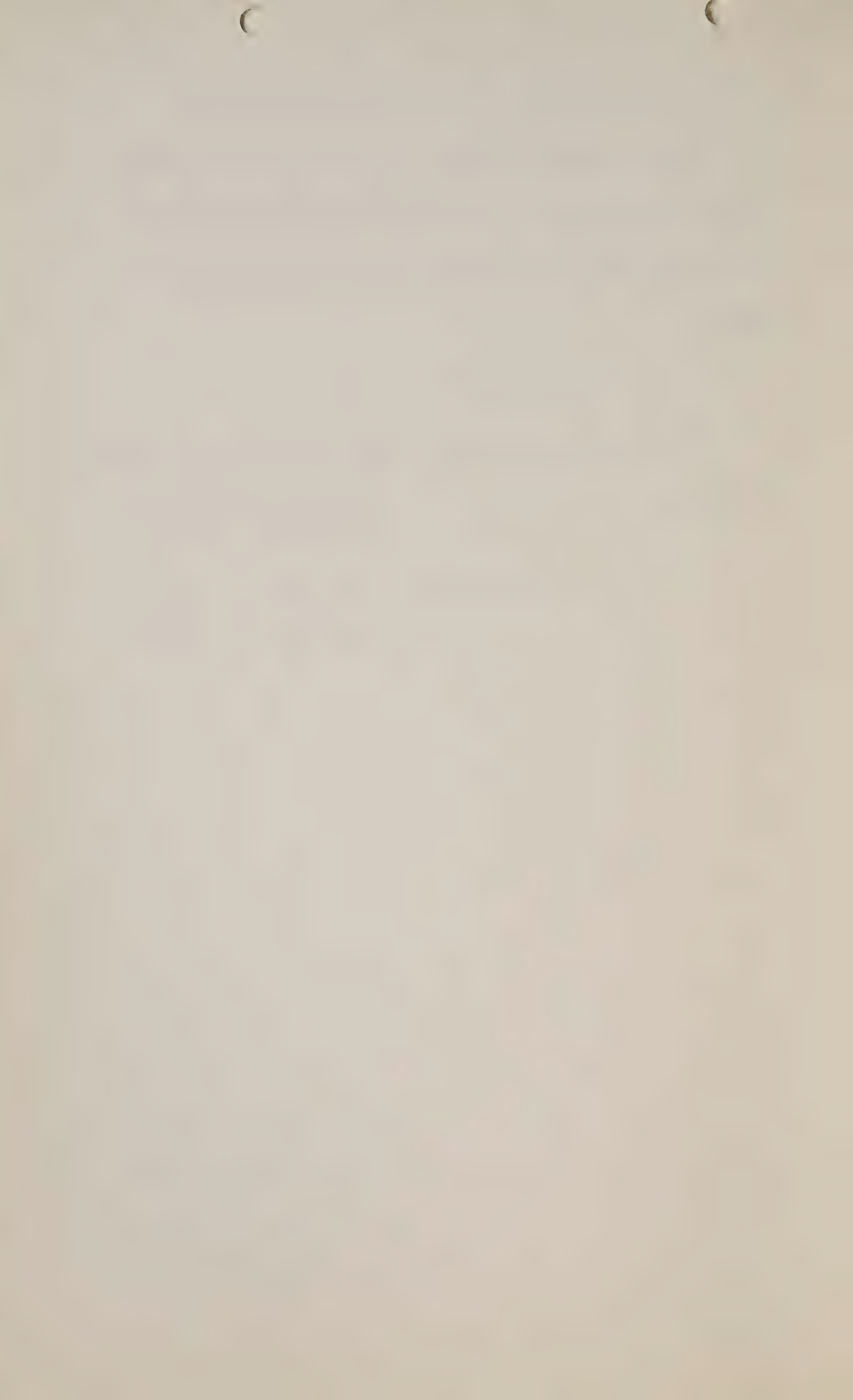
[8.] I agree that all the statements above are correct

Dated: _____ (Signature of client)

(Typed name of client)

Witnessed by (Signature of witness)

(Typed name of witness)



COMMENT: In dealing with bankrupts, at some point in the proceedings, facts may emerge that indicate the papers filed in the action are inaccurate. Sometimes a creditor or an asset is not listed. The bankrupt may state, "I told my lawyer but he just didn't put it down right." This puts the attorney in the embarrassing position of contradicting his client, in effect impeaching him, or laying himself open to a malpractice action. For this reason, it is wise for the attorney to protect himself by obtaining the client's signature on a form such as that above, retaining it in his files, and advising the client he is keeping it. If there are a large number of nondischargeable debts, it is wise to add the supplementary paragraph [6] indicated above. And if the client is proceeding in forma pauperis, supplementary paragraph [7] is recommended.

2. Fees and Costs

a. [§9.4.18] Amounts and Place of Filing

The fee for filing a petition in bankruptcy is \$50, which must be paid at the time of filing. Filing an amendment to bankrupt's schedule of creditors after notice to creditors results in an additional \$10 fee. Bankruptcy Act §40 c (3), 11 USC §68(c)(3). Under the Bankruptcy Act §40 c (1), 11 USC §68(c)(1), General Order No. 35(4) and



local court rules, the client may petition the court to pay the filing fee by installments. See §9.4.20.

The fee must be paid to the Clerk of the United States District Court at the time of filing, unless leave to proceed in forma pauperis (i.e., by paying in installments) has been granted.

A little known but significant point with respect to filing fees is that if the bankrupt pays the filing fee it is not recoverable. However, if he borrows the fee from his wife, and she is not filing, or from a friend or relative, the individual advancing the fee is entitled to be listed as a priority creditor on Schedule A-1. Kolb v Berlin (5th Cir 1966) 356 F2d 269.

b. Forma Pauperis Filing - Not Recommended

(1) [§9.4.19] Problems, Recommendations, and Client Instructions

Although the Court accepts the forma pauperis petition if it is filed, the attorney does the client an injustice in recommending it because a large percentage of clients do not comply with the Court's order to pay within the required period (customarily 6 weeks). The effect of this failure to pay is a dismissal of the petition, which is res judicata on all listed obligations. This means that the client can never obtain discharge in bankruptcy on these obligations.



Attorney for Bankrupt -

Filed: _____

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA

_____ DIVISION

IN THE MATTER OF

NO. _____

PETITION TO PAY FILING

____ Bankrupt _____

FEE IN INSTALLMENTS

The bankrupt above named respectfully represents that:

I

He is presenting for filing herewith a voluntary
petition in bankruptcy.

II

He is presently without money to pay the filing fees
in connection with his petition, and is unable to obtain the
money

(Insert reason if your District so requires)

because _____.

III

It is therefore necessary that he pay the fee in
installments.

IV

He proposes to pay the fee in suitable monthly
installments in order that the fee be paid by date of discharge.

WHEREFORE, petitioner prays that his said petition in



bankruptcy be accepted for filing without payment of filing fee, and that the Court fix amount and date of installments to be made in payment thereof.

(Signature of bankrupt)

(Typed name of bankrupt)

State of California

County of _ _ _ _ _

I, -- (Name of petitioner) --, person named in foregoing petition, do hereby affirm that the statements contained therein are true and correct,

(Signature of bankrupt)

(Typed name of bankrupt)

Subscribed and sworn to before me on _ _ _ _ _ , 19_ _ _ .

(Signature of notary)

(Typed name of notary)

Notary Public for the

State of California

(SEAL)



Make sure the client is completely aware of t 3. See

Cowans §237

The client should be advised that many collection agencies check on all dismissals, and institute attachment proceedings and other harassing tactics immediately upon obtaining notice of dismissal.

If client can raise part of the fee, and the remaining amount is under an attachment that can be lifted by an application to the Court to declare levy void and to direct creditor to release same, attorney may recommend that client file in forma pauperis and ask the court to allow the released levy to apply on the filing fee.

However, it should be made clear that in almost every case forma pauperis filing is not advisable, and that if there is any possible source from which client can raise the \$50 necessary to pay the complete fee, he should do so.

(2) [§9.4.20] Form: Petition To Pay Filing Fee in Installments

Note: This form is referred to as Petition for Leave to File Without Prepayment in the general instructions by clerk of the court in §9.4.5.

Copies: Five - - three originals filed with the Bankruptcy Petition, one for client, and one copy retained for file.



COMMENT: The Clerk of the U. S. District Court is authorized to accept the petition for filing when it is accompanied by an application of the type set forth above. See General Order 35(4). Some districts demand specific facts to substantiate the installment payment request. However, this demand is rare. Remember that this application must be verified. See Cowans §§1178-1179, Remington Form 202-203.

(3) [§9.4.21] Order 35(4): General Orders in Bankruptcy

(4) The petition in a voluntary proceeding under Chapter I to VII or Chapter XIII of the Act may be accepted for filing by the clerk if accompanied by a verified petition of the bankrupt or debtor stating that the petitioner is without and cannot obtain the money with which to pay the filing fees in full at the time of filing. Such petition shall state the facts showing the necessity for the payment of the filing fees in installments and shall set forth the terms upon which the petitioner proposes to pay the filing fees.

a. At the first meeting of creditors or any adjournment thereof, the court after hearing and examination of the bankrupt or debtor, shall enter an order fixing



the amount and date of payment of such installments.

The final installment shall be payable not more than six months after the date of filing of the original petition; provided, however, that for cause shown the court may extend the time of payment of any installment for a period not to exceed three months.

b. Upon the failure of a bankrupt or debtor to pay any installment as ordered, the court may dismiss the proceeding for failure to pay costs as provided in section 59, sub. g of the Act. If a proceeding is dismissed or closed without the payment of the filing fees in full, the amount collected in installments, including any payment made at the time the original petition is filed, shall be divided between the clerk, the referees' salary fund, the referees' expense fund and the trustee, if any, in the same proportion as such filing fees would be distributed if paid in full.

c. No proceedings upon the discharge of a bankrupt or debtor shall be instituted until the filing fees are paid in full.

(4) [\$9.4.22] Follow-up Procedures



3. [\$9.4.23] Sample: Attorney's Notice to Creditors

Copies: One to each creditor, and one that contains
names of all notified creditors for file.



(Date,)

-- (Name and address

-- of creditor) --

Gentlemen:

This is to advise you that -- (Name of petitioner) -- has
retained this office to represent him in his petition in
bankruptcy # -----, at ----- District Court,

-- (Address) -----, -- (City) -----, -- (Name of petitioner) --
has listed you as a(n) -- secured/unsecured -- creditor. Please

address further communications with regard to ----- (Name of --

petitioner) -----'s obligation to this office. In order to

deal in an equitable manner with (Name of petitioner) -----'s

obligations, we would like to hear from you as soon as

possible if for any reason you feel that your obligation

should not be discharged by this petition in bankruptcy.

Sincerely yours,

(Signature of attorney)
(Typed name of attorney)
Attorney at Law

COMMENT: This brief notice serves a two-fold purpose. To some extent it may relieve the client from continued harassment by his creditors, and, if the communication is returned, it puts the attorney on notice that the client may lose his discharge due to improper scheduling, so he can take steps to remedy the situation. The final sentence may result in the attorney obtaining at an early date information which will be necessary in the event of a later nondischargeable lawsuit. The creditor will probably appreciate such a notice, since it may often save the expense of an attachment which would later be voided by the Bankruptcy court.

4. [§9.4.24] Sample: Letter to Client That Creditor Notice Returned

Copies: Two -- Original to client and copy for file.



(Name and address of client)

(Date)

Dear _____:

When our office prepared and filed your bankruptcy papers, we communicated with all the creditors whose names you gave us.

One/Several of our communications has/have been returned to this office by the Post Office because of an incorrect address. This means that the official notice sent by the Court was also not delivered. As I explained to you, at our meeting on _____, 19____, if your creditor does not receive notice of your bankruptcy, you remain obligated to him even after you receive your discharge in bankruptcy. He can sue you, obtain judgments against you, and attach your wages long after you think you have been discharged.

We must remedy this situation as soon as possible.

Please make a greater effort to obtain the addresses of:

(List names of creditors whose notices were returned)

1. _____
2. _____

As soon as you have found the proper address(es), telephone me or stop in at the office and bring the correct address(es) with you. We will then take the necessary steps to advise the Court and these creditors so that you will be

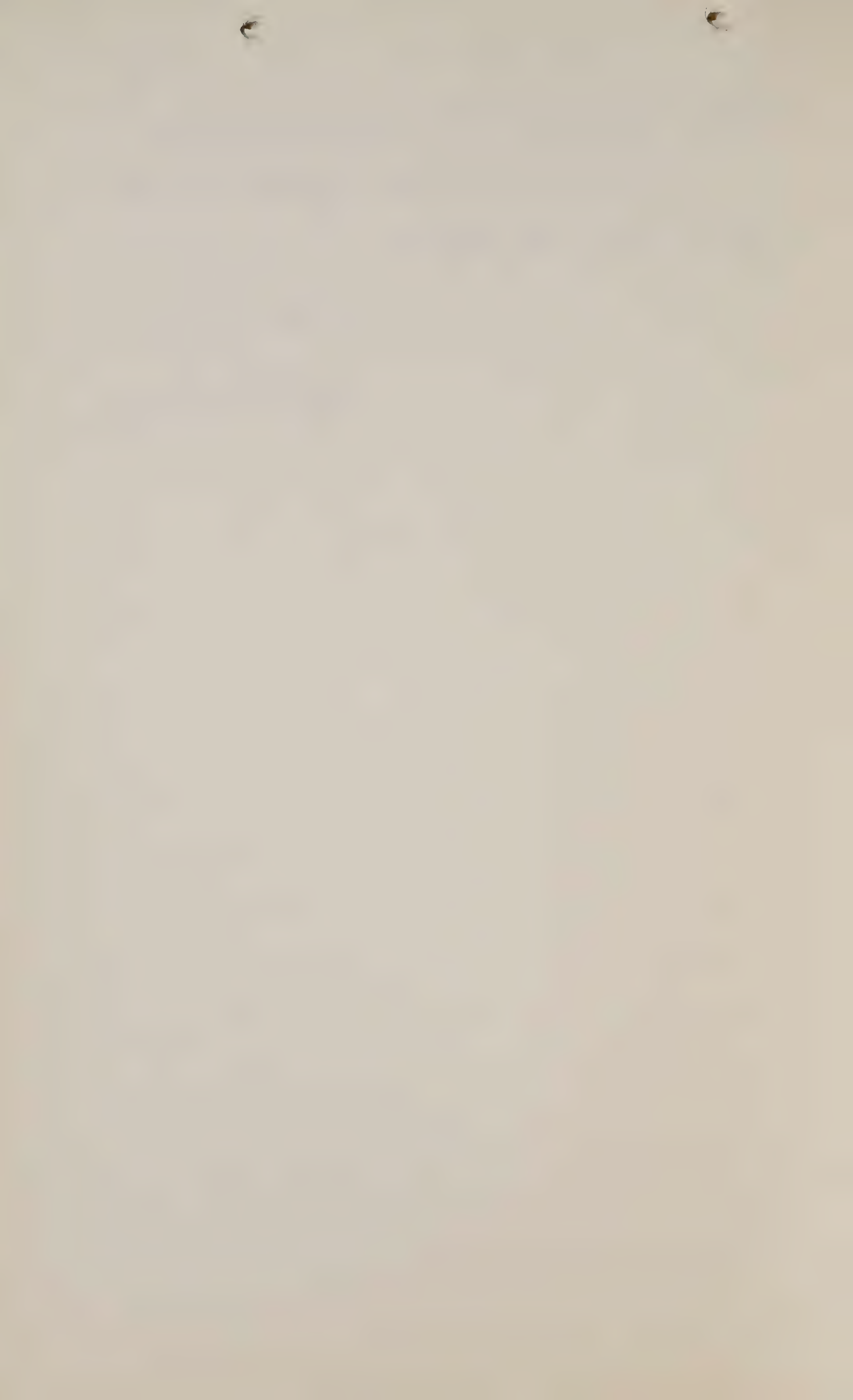


protected against them by your discharge in bankruptcy.

Please remember that failure to get this information promptly can prove very expensive.

Sincerely yours,

(Signature of attorney)
(Typed name of attorney)



COMMENT: The advantage of the attorney sending out his own notices to creditors is that he will thereby be advised if the addresses are inaccurate. It is not the responsibility of the Court to keep the attorney so informed. When the address is obtained, the attorney may amend the schedules to insert the proper addresses. However, such amendment does not provide the creditor with notice, and it is the responsibility of the attorney to see that the creditor is notified.

Cowans Bankruptcy Law and Practice recommends that the attorney:

1. Obtain one of the printed or mimeographed notices of the first meeting of creditors, if available.
2. Send it by certified or registered mail, return receipt requested.

For a full discussion of the ramifications of the nonscheduled or improperly scheduled debt under Bankruptcy Act §17a(3) (11 USC §35(a)(3)). See Cowans §§463-471.

5. [§9.4.25] Delayed Filing of Schedules or Statement of Affairs

Delayed filing of schedules or statement of affairs is permissible under Bankruptcy Act §7 a (8) (11 USC §25(a)(8)) if the bankrupt files a list of all creditors and their addresses with his application. See §9.4.28. The Court



notifies the creditors on this list of the first meeting.

It is unwise, unless time is of the essence (e.g., if another wage attachment would mean that the client would lose his job) to file the petition before preparing and filing the schedules and statement of affairs, because there is the risk that the statement of affairs will not be filed five days before the first meeting, as required by Bankruptcy Act §7 a (9), 11 USC §25(a)(9). There is an added inconvenience of preparing two lists of creditors, one given to the court with the petition, and one in the liability schedules.

Procedures vary as to the application for and granting of permission to delay filing. In some jurisdictions the delay is granted by the Referee, and in others by the District Judge. It is wise to check with the Clerk of the U.S. District Court in the District where the petition will be filed, to determine the procedure to follow.

It is recommended that both an application and order be prepared. See Cowans §809; §§9.4.26-27.

a. [§9.4.26] Form: Application for Order Extending Time for Filing Schedules

Copies: Two -- One original filed with order and list of creditors and copy for files.



Filed: _____

Attorney for Bankrupt

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA

_____ DIVISION

IN THE MATTER OF

No. _____

BankruptAPPLICATION FOR ORDER
EXTENDING TIME TO FILE
BANKRUPTCY SCHEDULES

The bankrupt above named respectfully represents that:

I

He is filing herewith a voluntary petition in
bankruptcy, and that with that petition he is filing a list
of all his creditors and their addresses.

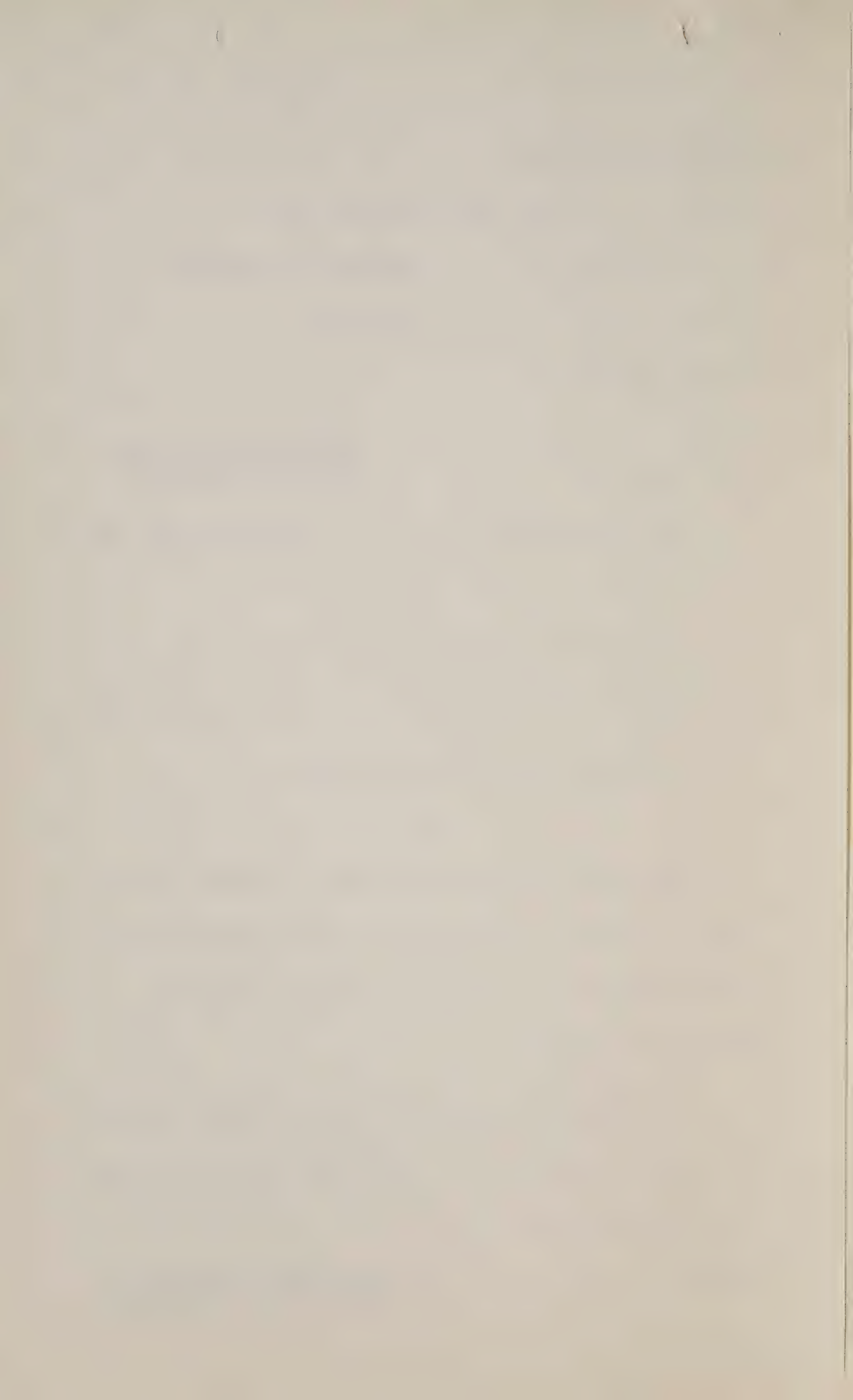
II

He has been unable at this time to complete prepara-
tion of his schedules because of the length and complexity
of the schedules, and because of the need to file the
petition immediately.

WHEREFORE, petitioner prays for an extension of time
up to and including the _____ day of _____, 19 __, to
file said schedules.

Dated: _____

(Signature of Bankrupt)
(Typed name of Bankrupt)



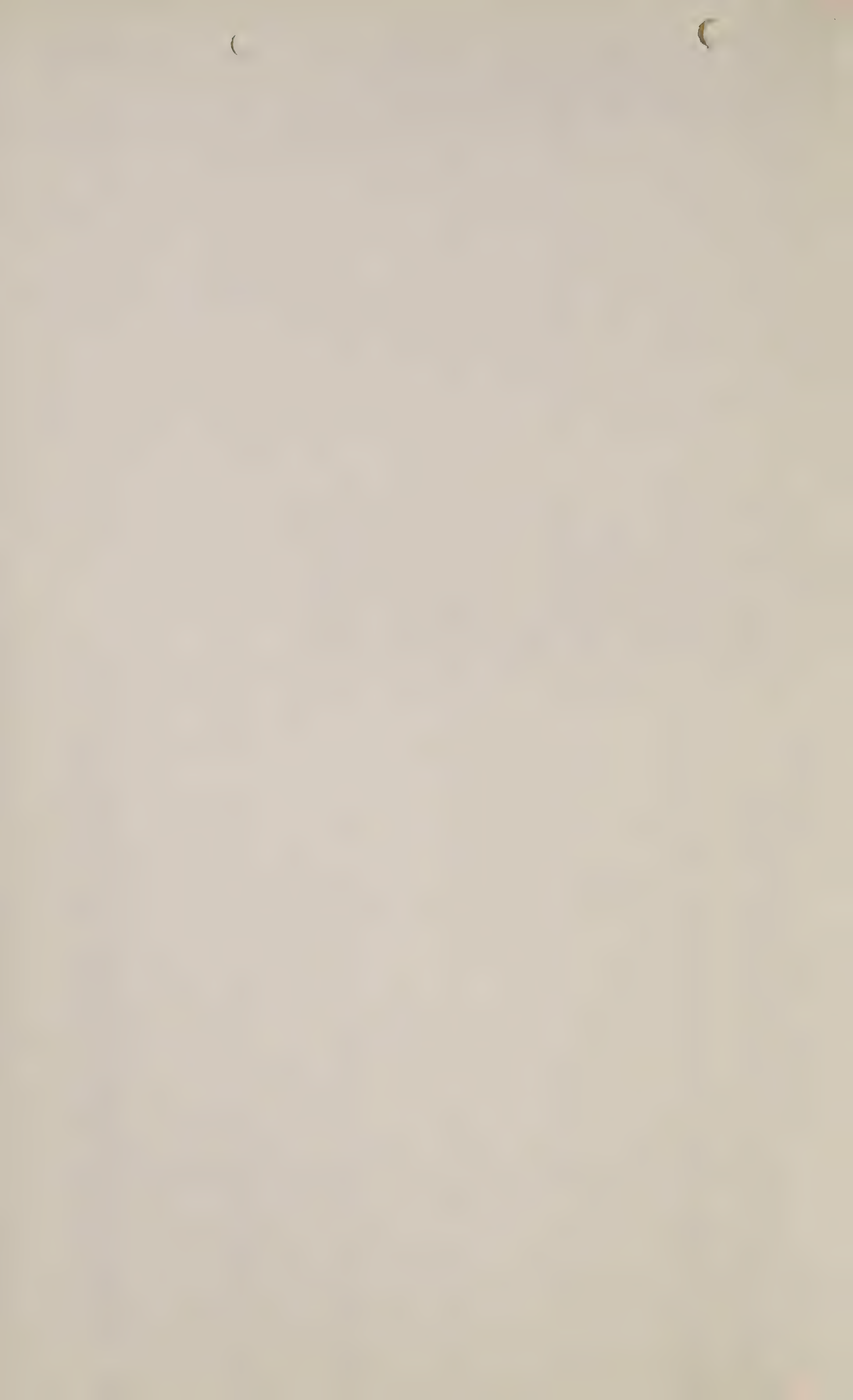
Note: There is no statutory requirement that this application be verified. It is wise, however, to ascertain the rule in the district in question. (See Cowans §1192, Remington Form 212.)

b. [\$9.4.27] Form: Order Extending Time for Filing Bankruptcy Schedules

Copies: Two: Original filed with application and list of creditors and copy for file.



[illegible]



UNITED STATES DISTRICT COURT
FOR THE _____ OF CALIFORNIA_____
DIVISION

IN THE MATTER OF

No. _____

Bankrupt

ORDER EXTENDING TIME
FOR FILING BANKRUPTCY
SCHEDULES

Good cause having been shown in the ex parte
application of petitioner herein for an order extending
time to file bankruptcy schedules, this day filed,

IT IS ORDERED that the time within which petitioner
may file schedules is extended to _____, 19__.

Dated: _____

~~Judge, United States District Court~~



COMMENT: This order should be attached to the Application.

See Cowans §1193, Remington Form 213.

c. [§9.4.28] Annotated Form: List of Creditors

Copies: Three: Two originals sent to the Clerk of the U.S. District Court with application and order, and one for files.



D. POSTFILING PROCEDURES

1. [§9.4.29] Restraining Orders and Orders Avoiding Liens

In many cases, state court actions are not automatically stayed by bankruptcy. Therefore, the attorney for the bankrupt must move in Bankruptcy Court for a stay of the state court action under the authority of Bankruptcy Act §11a, 11 USC §29a, which provides:

A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition by or against him, shall be stayed until an adjudication or the dismissal of the petition; if such person is adjudged bankrupt, such action may be further stayed until the question of his discharge is determined

After the question of discharge is determined, the attorney must promptly plead the discharge as an affirmative defense in the state court. A form for requesting a stay follows in §9.4.30. If the debt is nondischargeable, a stay will not issue.

Cases have extended the protection of Bankruptcy Act §11a, 11 USC §29a, to allow restraining orders to issue also in suits commenced after the petition has been filed.

Bankruptcy of Mustin (DC ND Ala 1908) 165 F 506.

The procedure with regard to temporary restraining orders customarily involves three stages. First, the bankrupt seeks, ex parte, a temporary restraining order and an order to show cause, which are served upon the creditor and the sheriff. Second, a hearing is held. (The attorney should attempt to have the hearing scheduled to coincide with the first meeting.) Third, another temporary restraining order is issued after the hearing to restrain the creditor until the ruling upon the discharge.

Section 67a of the Bankruptcy Act, 11 USC §107a, states:

(a)(1) Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition ... under this Act by or against such person shall be deemed null and void if at the time when such a lien was obtained such person was insolvent....

The debtor may make use of this section to obtain release of attachments on wages or other exempt property instead of following the procedures set forth in §9.3.13



dealing with claim of exemption. A form of Application

To Declare Judicial Lien Invalid is set forth in §9.4.33

below.

a. [§9.4.30] Form: Application To Stay State Court
Actions

Copies: Original filed with court clerk, one for

each creditor, and for file.



Attorney at Law -----

FILED:-----

-----, Referee

-----, California

Attorney for Bankrupt

UNITED STATES DISTRICT COURT

FOR THE ----- DISTRICT OF CALIFORNIA,

----- DIVISION

IN THE MATTER OF

No. -----

APPLICATION TO STAY
STATE COURT ACTIONS

Bankrupt

----- (Name of bankrupt) ----- respectfully alleges:

I.

He filed a Voluntary Petition in Bankruptcy on -----,

19__.

II.

On that date there ----- pending against him the
was/were

following action(s) in the court(s) indicated below:

Name of Plaintiff

Court

Case No.

III.

Each of these action(s) ----- Based on a claim
is/are

provable in bankruptcy that would be barred by a discharge

in bankruptcy. Unless the plaintiff(s) named above

is/are



restrained from proceeding with his/their action(s) against applicant until the question of applicant's right to discharge is determined, applicant will be deprived of benefits to which he is entitled under the provisions of the Bankruptcy Act.

WHEREFORE, applicant prays that this Court enter its Order staying the above-referred to actions pending determination of applicant's right to a discharge in bankruptcy.

(Signature of attorney)
(Typed name of attorney)

Attorney for
(Typed name of client)



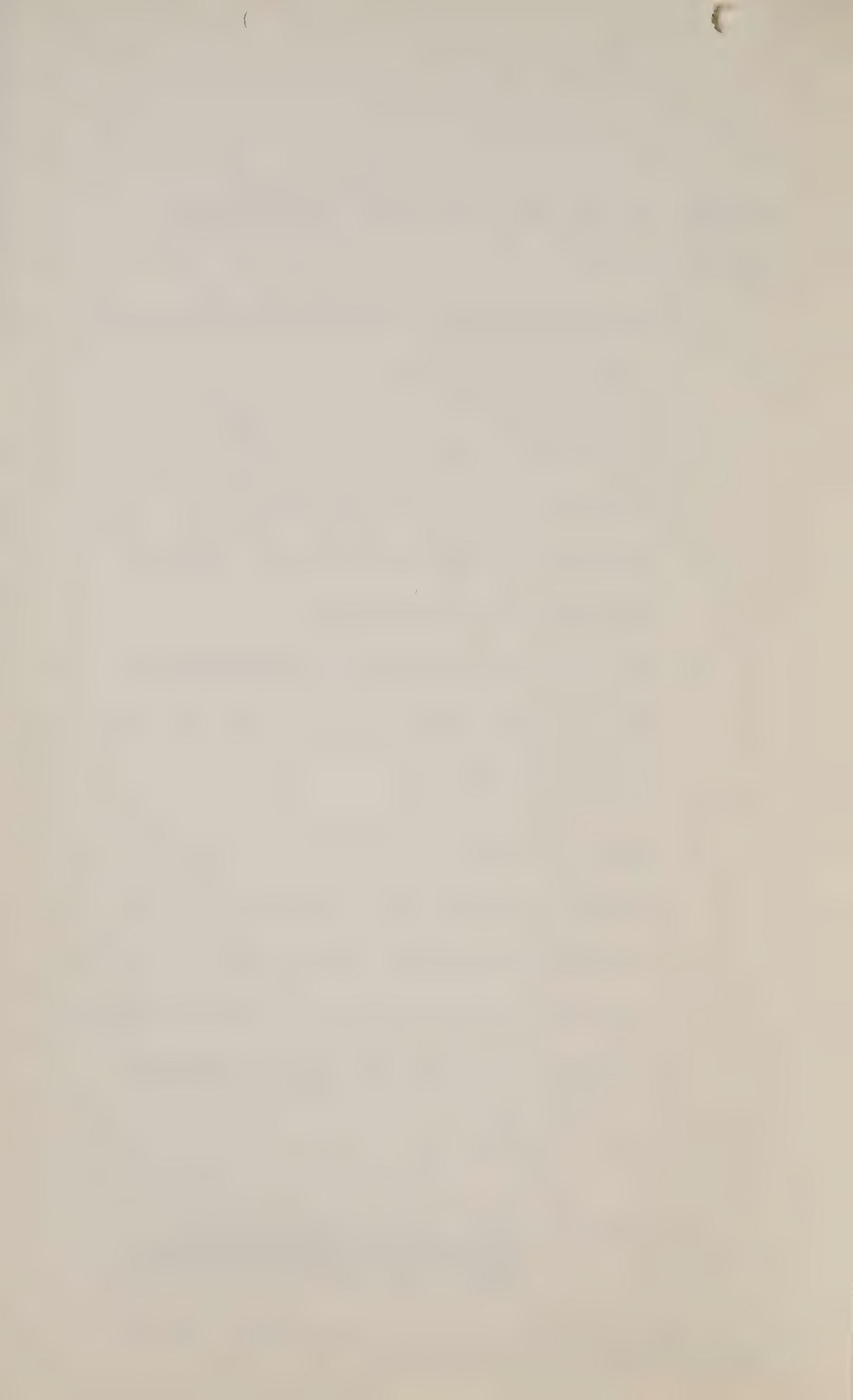
COMMENT: The following points must be covered in this application:

1. The party sought to be restrained is not the state court, but the creditor.
2. Since Bankruptcy Act §11a, 11 USC §29a, is applicable only to dischargeable debts, the application is defective unless it contains an allegation of dischargeability.
3. The application must contain an allegation that the benefits of the Bankruptcy Act will be lost if the order is denied.
4. Since discharge is not automatic, it is improper to request a delay "until discharge is granted," but instead the request should be couched in terms like "pending determination of applicant's rights."

See also Handling a Bankruptcy Case, Demonstration Case File, (Cal. CEB 1963).

- b. [\$9.4.31] Form: Order To Show Cause on Application To Stay State Court Actions, and Temporary Restraining Order

Copies: Original filed with court clerks, one copy for each creditor, and one for file.



FILED: _____

_____, Referee
 Attorney(s) for Bankrupt

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA

DIVISION

IN THE MATTER OF

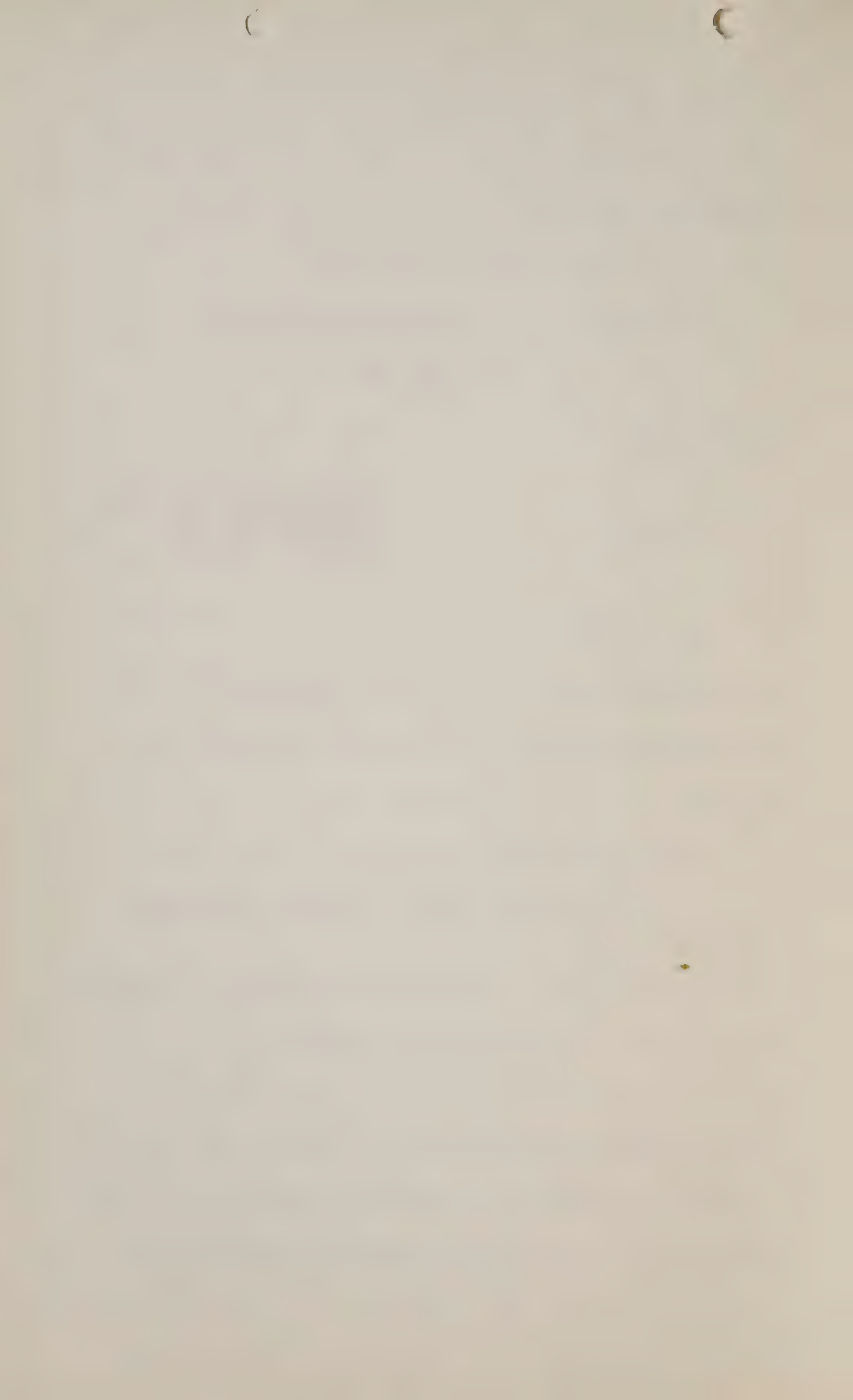
No. _____

Bankrupt.ORDER TO SHOW CAUSE ON
APPLICATION TO STAY STATE
COURT ACTIONS, AND
TEMPORARY RESTRAINING ORDER

On application of _____, the above-
 named bankrupt, praying for a stay of _____ state court
 action(s) pending against him, and good cause appearing
 therefor,

IT IS ORDERED, that on _____, 19____, at
 _____ .m., before the undersigned Referee in Bankruptcy,
 in his courtroom, _____
 (Room number and address of courtroom)
 _____, _____
 (Names of creditors) _____
 _____ show cause, if
 any, why this Court should not enter its Order staying all
 further proceedings in the action(s) referred to below until
 the right of the above-named bankrupt to a discharge in
 bankruptcy has been determined; and

IT IS FURTHER ORDERED, that pending hearing on this



Order to Show Cause, (Names of creditors) -----

----- his/their

attorney(s), agents, servants and employees are stayed from taking further proceedings of any kind against the above-named bankrupt in the following action(s):

<u>Name of Plaintiff</u>	<u>Court</u>	<u>Case No.</u>
-----	-----	-----
-----	-----	-----
-----	-----	-----

and

IT IS FURTHER ORDERED, that if respondent(s)

(or any or them) -- intend to contest the application of

(Name of bankrupt) -- to stay their state court action(s),

he/they -- shall, pursuant to (local rule number), file

his/their written answer, objection, or other responsive

pleading and serve a copy of it on (Name of attorney for bankrupt)

at least ---- days prior to the hearing on this Order to

Show Cause; and

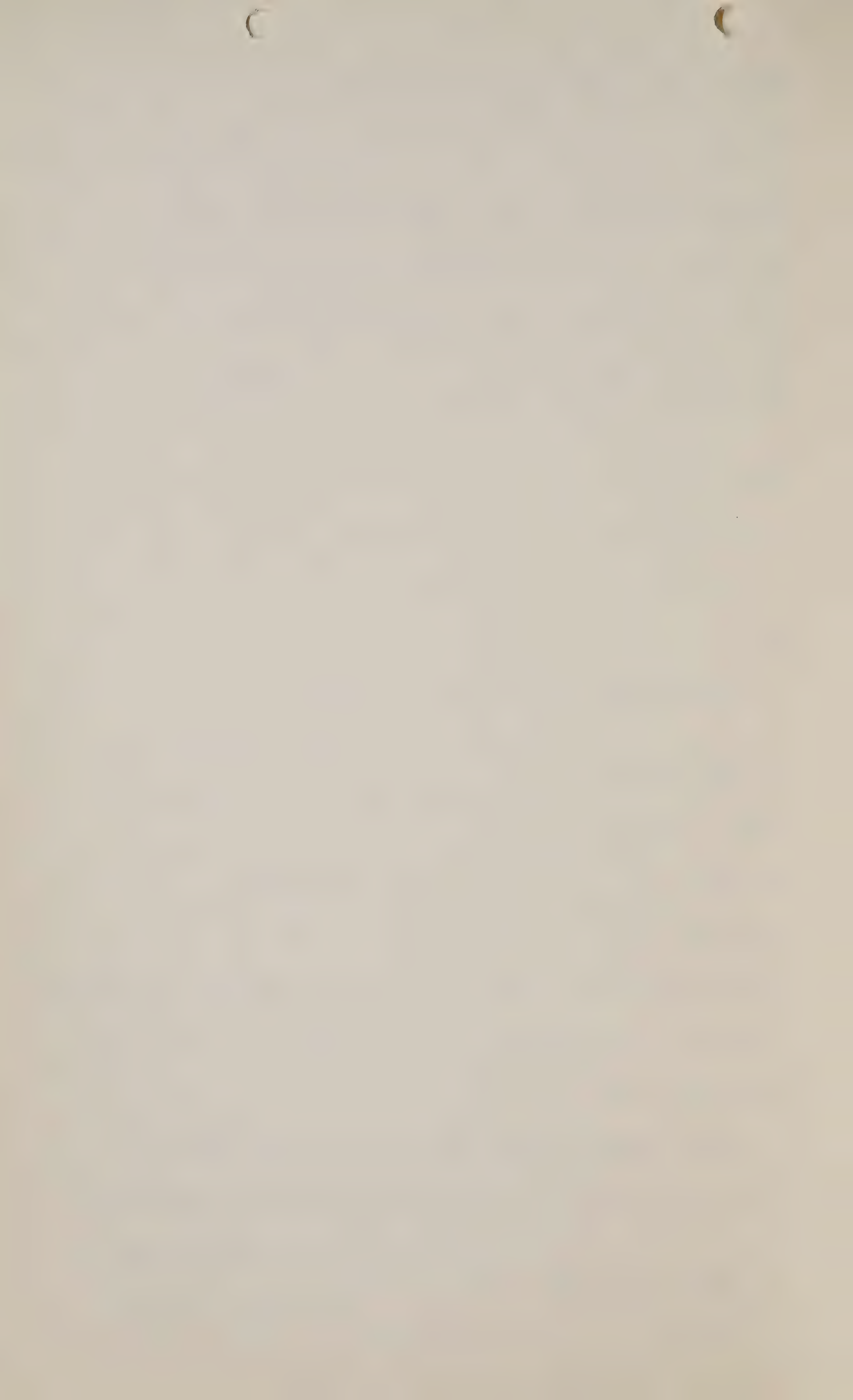
IT IS FURTHER ORDERED, that service of this Order to

Show Cause be made personally with a copy of the application

of (Name of bankrupt) to stay state court action(s) to the

respondent(s) in care of his/their -- attorney(s), at least

---- days prior to hearing, as follows:



(List for each creditor)

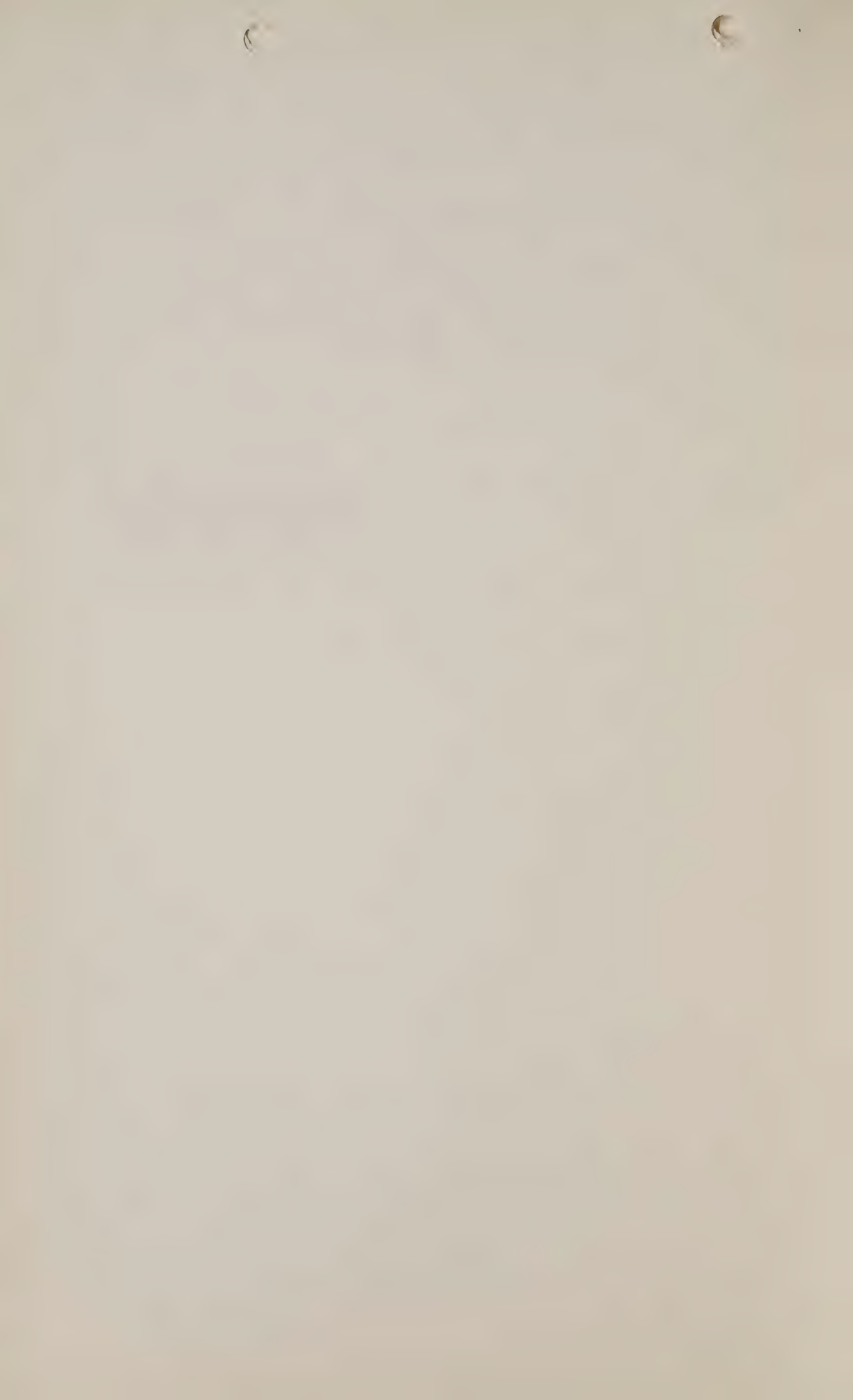
-- (Name of Creditor) --

c/o -- (Name of Attorney) --

-- (Address of Attorney) --

Dated: -----

(Signature of Referee)
(Typed name of Referee)
Referee in Bankruptcy

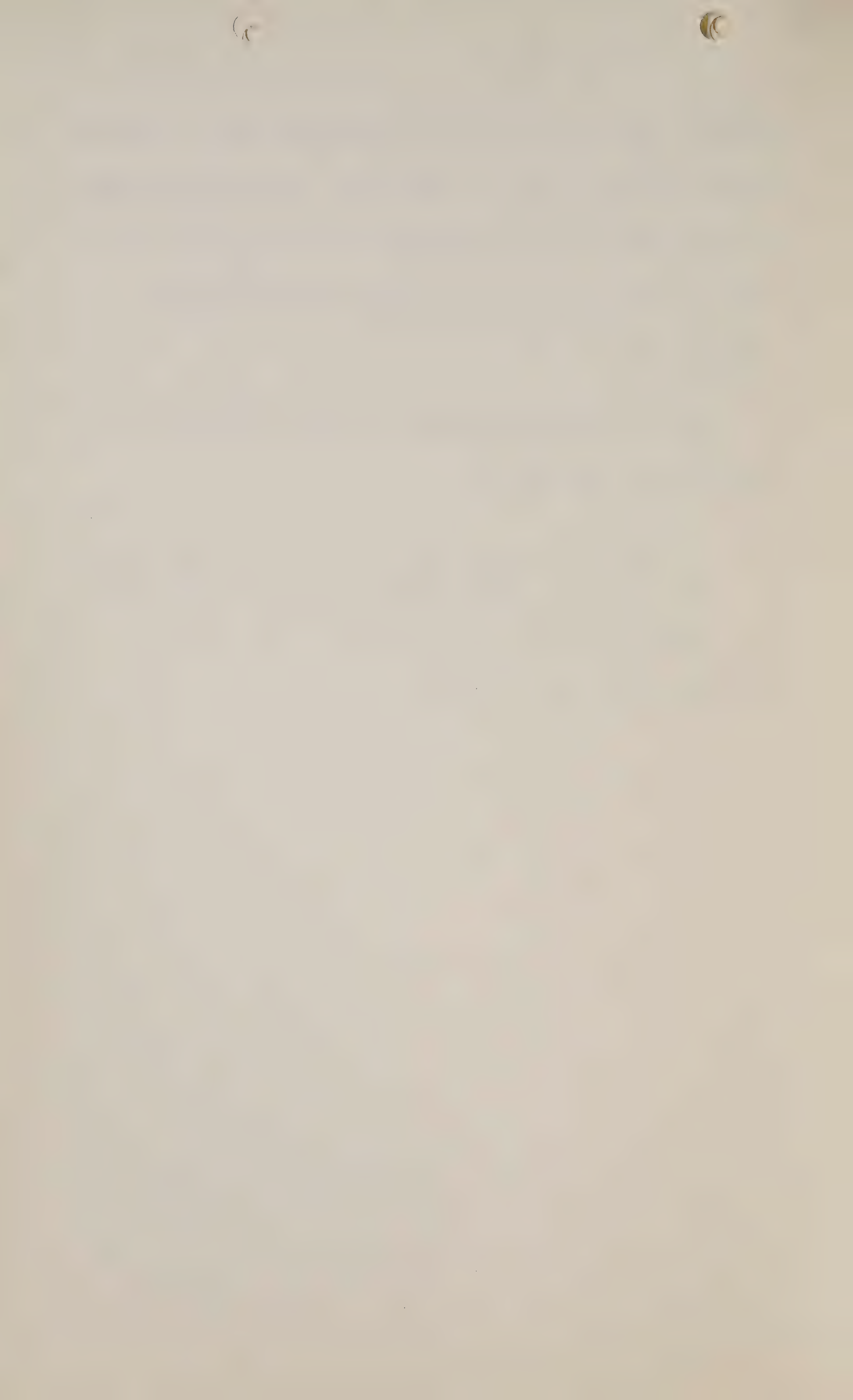


COMMENT: Personal service of orders to show cause is required in the Northern District of California. It is possible that in other districts service by mail may be acceptable. It would be wise to ascertain the policy in the district in which you file.

(See also Handling a Bankruptcy Case, Demonstration Case File. (Cal CEB 1963.))

c. [§9.4.32] Form: Order Staying State Court Action

Copies: Original filed with court clerk, one copy for each creditor, and for file.



FILED: _____

Attorney(s) for Bankrupt

_____, Referee

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA

_____ DIVISION

IN THE MATTER OF

No. _____

ORDER STAYING STATE COURT
ACTIONS

Bankrupt

This matter was heard on _____, 19____, at
_____.m., before the undersigned Referee in
Bankruptcy, in his courtroom, _____ (Room number and address
of courthouse) _____, on the application of the above-
named bankrupt to stay _____ state court action(s)
the/certain
presently pending against him in the

(Insert appropriate court)

____ (Superior Court for the County of _____ / Municipal
Court of the _____ Judicial District) _____

The applicant appeared by and through his attorney(s) _____

(Insert if appropriate)

Respondent, _____ (Name of respondent) _____, filed a _____ (type of
response) _____ to the application and appeared at the hearing
by and through his counsel _____.



(Insert if appropriate)

Respondent, (Name of respondent) ---, failed to file any pleadings in response to the application, as required by the Order to Show Cause, and failed to appear at the hearing.

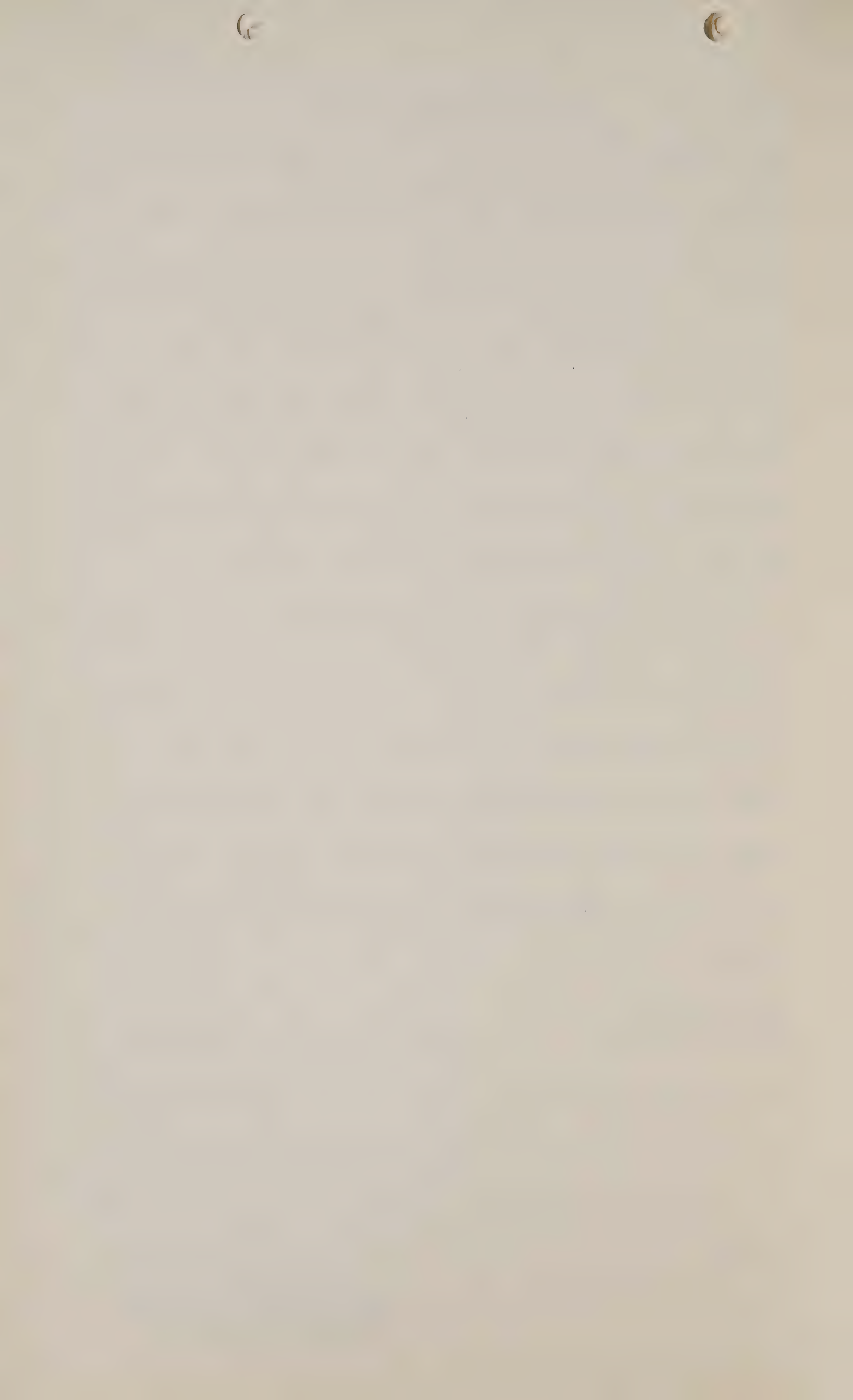
The Court being fully advised ^{in the premises,} it appearing that service of the application to stay state court actions and the Order to Show Cause have been duly made on all respondents, and good cause appearing therefore pursuant to section 11a of the Bankruptcy Act (11 USC §29a)

IT IS ORDERED, that pending determination of the bankrupt's right to a discharge, the below named plaintiff(s), his/their attorneys, agents, servants, and employees be, and they hereby are, stayed from taking further proceedings of any kind against the above-named bankrupt in his/their certain action(s) set forth below and now pending in state courts indicated below:

<u>Name of Plaintiff</u>	<u>Court</u>	<u>Case No.</u>
-----	-----	-----
-----	-----	-----
-----	-----	-----

Dated: _____

(Signature of Referee)
(Typed name of Referee)
 Referee in Bankruptcy



(See also Handling a Bankruptcy Case, Demonstration Case File, pp. 82-84. (Cal CEB 1963).)

d. [\$9.4.33] Form: Application To Declare Judicial Lien Invalid

Copies: Original filed with court clerk, one for each creditor, and one for file.



FILED: _____

_____, Referee
Attorney(s) for Bankrupt

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA
_____ DIVISION

IN THE MATTER OF

No. _____

Bankrupt

APPLICATION TO DECLARE
JUDICIAL LIEN INVALID

(Name of bankrupt) _____ respectfully alleges:

I.

Applicant is the above-named bankrupt.

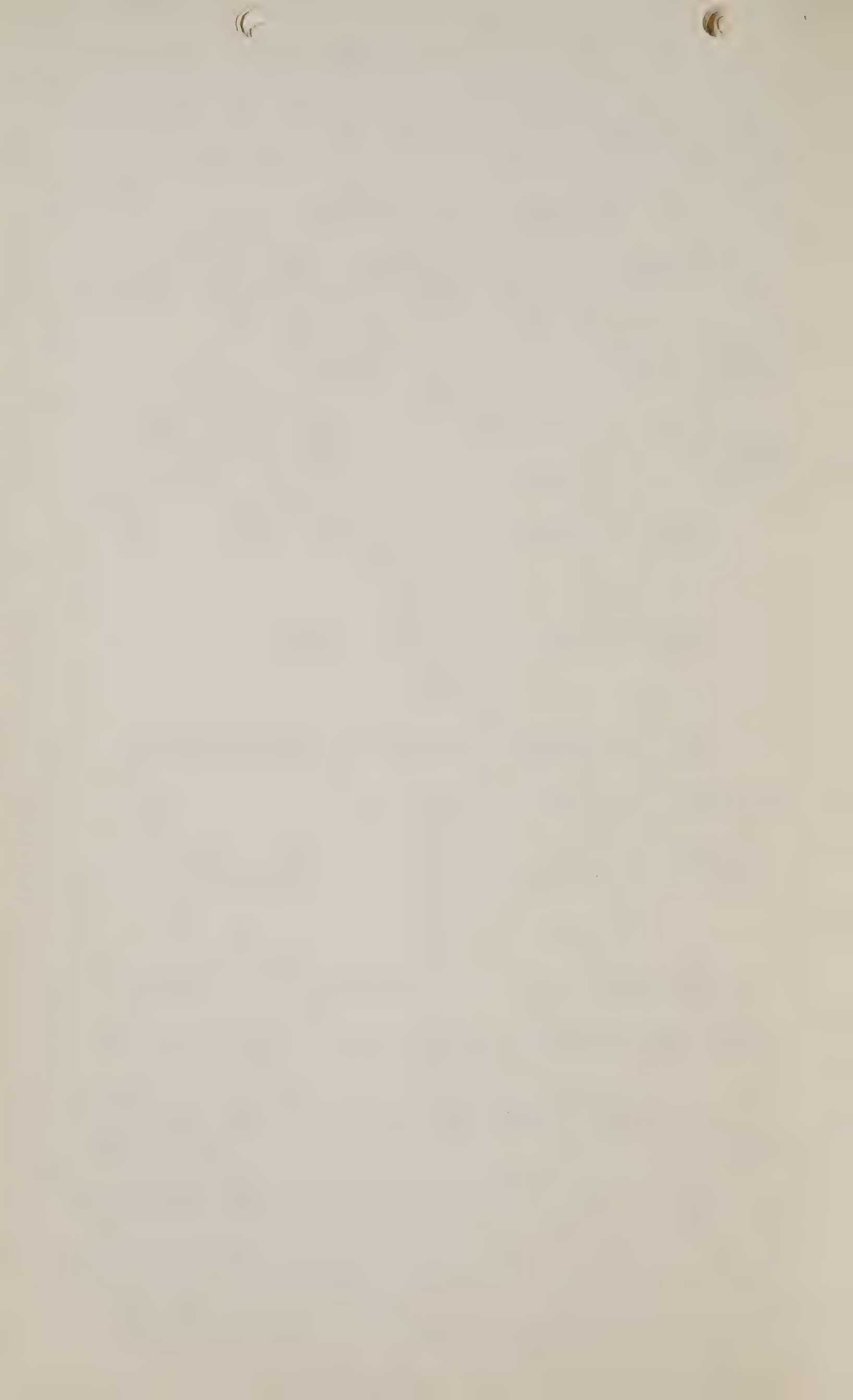
II.

His Voluntary Petition in Bankruptcy instituting the
above proceeding was filed herein on _____, 19__.

(Repeat paragraphs for each Lien renumbering as necessary)

III.

On or about _____, 19__, an action was filed
against applicant in the _____
(Superior Court for the County of _____
_____/Municipal Court for the _____ Judicial District)
entitled " _____ v _____", and being
case number _____. In connection therewith, on or about
_____, 19__, and pursuant to writ, an attachment was
made on certain _____ property owned by applicant
real/personal _____
and located in _____, County, of _____,



State of California, and described as follows:

(Insert when appropriate)

[IV]

At the time the attachment lien arose, applicant was insolvent within the meaning of the Bankruptcy Act.

(Insert when appropriate)

[V]

Applicant has claimed the above-described real/personal property as an exempt (Describe nature of exemption) in this bankruptcy proceeding.

[VI]

By virtue of the facts as above alleged, the above-described attachment lien is null and void under §67a of the Bankruptcy Act, (11 USC 107(a)).

WHEREFORE, applicant prays that this Court enter its Order declaring the above-described attachment lien(s) void under §67a of the Bankruptcy Act, (11 USC 107(a)).

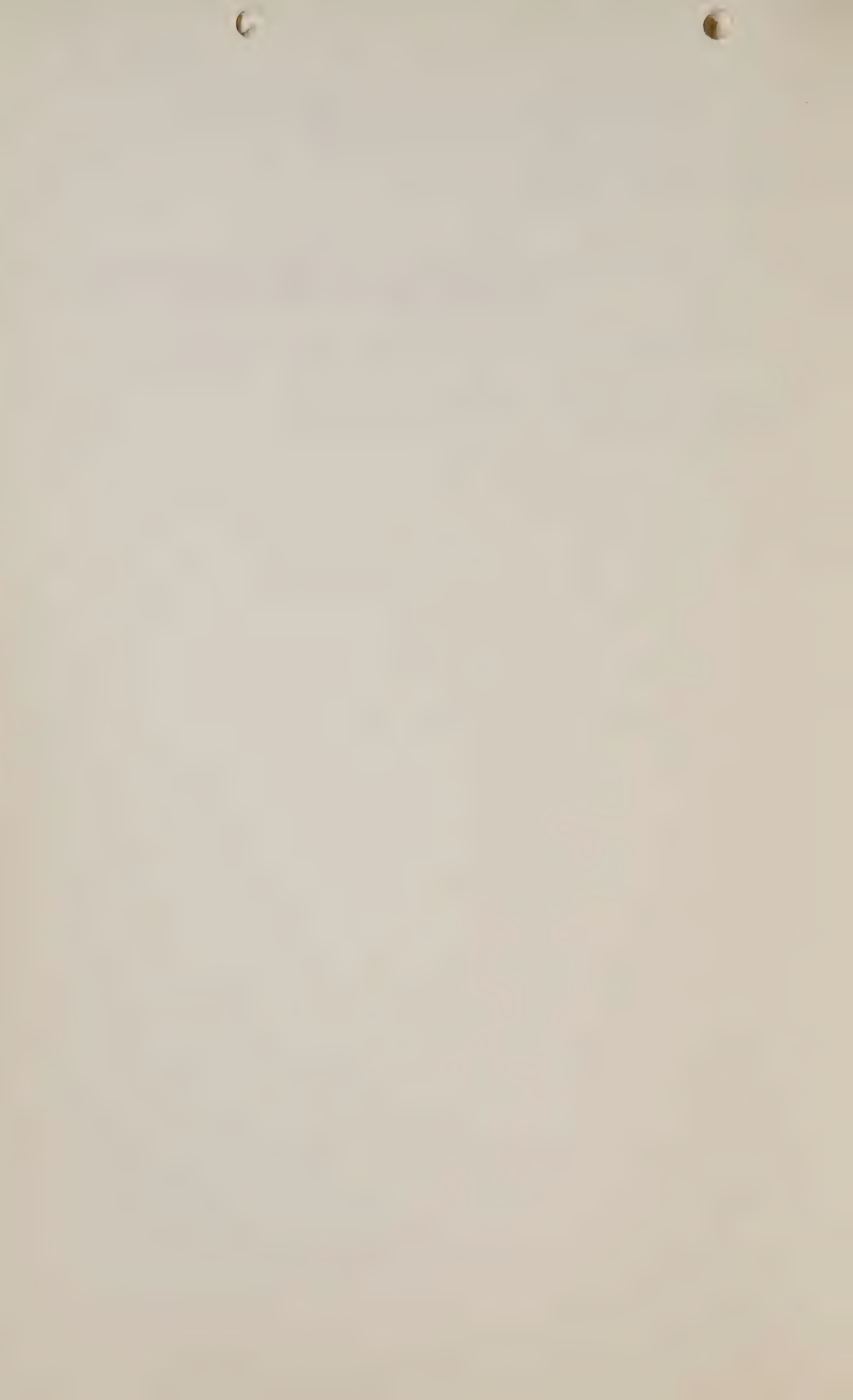
(Signature of Attorney)
 (Typed name of Attorney)
 Attorney for Bankrupt



See also Handling a Bankruptcy Case, Demonstration
Case File (Cal CEB 1963).

e. [§9.4.34] Form: Order To Show Cause On Application
to Declare Judicial Lien Invalid

Copies: Original filed with court clerk, one copy
for each creditor, one for file.



FILED: _____

Attorney(s) for Bankrupt

_____, Referee

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA

DIVISION

IN THE MATTER OF

No. _____

BankruptORDER TO SHOW CAUSE UPON
APPLICATION TO DECLARE
JUDICIAL LIEN INVALID

On reading and filing the application of _____

_____, the above-named bankrupt, to declare a judicial
lien invalid, and good cause appearing therefor,

IT IS ORDERED, that on _____, 19____, at _____ m.,

before the undersigned Referee in Bankruptcy, in his courtroom,

_____, (room number and address of courtroom) ' (name of creditor) _____

show cause why the application of _____
(name of bankrupt) _____

should not be granted, and why this Court should not enter

its Order declaring invalid the attachment lien referred to

in the application, and why any further Orders that are proper

should not be entered in the premises, and

IT IS FURTHER ORDERED, that if the respondent intends
to contest or resist the application of _____
(name of bankrupt) _____

to declare judicial lien invalid, it shall, pursuant to

(number of local rule) --, file its written answer,
 objection, or other responsive pleading thereto, and serve
 a copy of it on _____, attorney(s) for
 (name of bankrupt) --, at least _____ days prior to the
 date set for hearing on this Order to Show Cause; and

IT IS FURTHER ORDERED that service of this Order to
 Show Cause shall be made forthwith, by service of a copy of
 this Order and a copy of the application of (name of bankrupt) --
 to declare such judicial lien invalid, on respondent

(name of creditor) --; and

IT IS FURTHER ORDERED that service of this Order to
 Show Cause be made personally forthwith and with it a copy
 of the application of (name of bankrupt) --, as follows:

-- (name of creditor) --

c/o
 (name of creditor's attorney) --

(address of creditor's attorney)

Dated: _____

(Signature of Referee)
 (Typed name of Referee) --

Referee in Bankruptcy



COMMENT: Personal service of orders to show cause is required in the Northern District of California. It is possible that in other districts service by mail may be acceptable. It would be wise to ascertain the policy in the district in which you file.

(See also Handling a Bankruptcy Case,
Demonstration Case File (Cal CEB 1963).)

f. [\$9.4.35] Form: Order Declaring Judicial
Lien Invalid

Copies: Original filed with court clerk, one copy
for each creditor, one for file.

Bankruptcy
Procedures
Forms

FILED: _____

_____, Referee
Attorney(s) for Bankrupt

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA

_____ DIVISION

IN THE MATTER OF

No. _____

Bankrupt

ORDER DECLARING JUDICIAL
LIEN INVALID

This matter was heard on _____, 19____, at
_____.m., before the undersigned Referee in Bankruptcy,
in his courtroom, (room number and address of courtroom) _____,
on the application filed by the above-named bankrupt to
declare a judicial lien invalid and the Order to Show Cause
issued thereon. Applicant (name of bankrupt) _____ appeared
by and through his attorney(s), (name(s) of attorney(s)) _____.
Respondent (name of creditor) _____ failed to appear and failed
to file any pleadings in response to the application as
required by the Order to Show Cause. The Court being fully
advised, it appearing that service of the application and
the Order to Show Cause issued thereon has been duly made on
the respondent, and good cause appearing therefor,

IT IS ORDERED, that that certain judicial lien, arising
under writ of attachment issued out of the action described



below, is null and void under §67a of the Bankruptcy Act,

11 USC §107(a):

Name of Plaintiff

Court

Case No.

and

IT IS FURTHER ORDERED, that without limiting the
generality of the foregoing, such judicial lien is null and
void as against the following described real/personal
property:

(Describe property)

Dated: _____

(Signature of Referee)
(Typed name of Referee)

Referee in Bankruptcy



(See also Handling a Bankruptcy Case, Demonstration Case File, pp.86-88 (Cal. CEB 1963).)

2. Preserving Assets After Filing

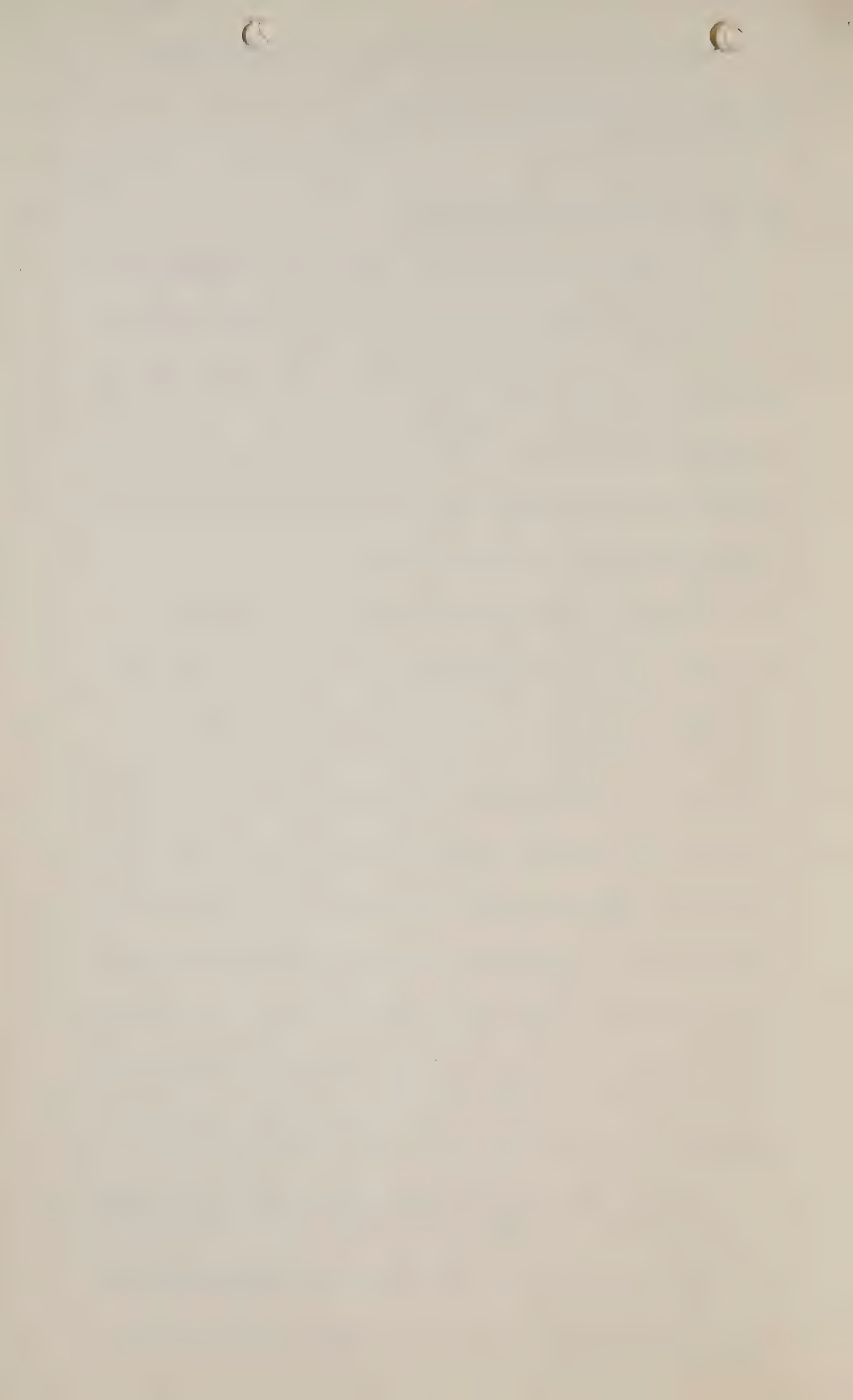
a. [§9.4.36] Purchasing Property from the Trustee

In some cases, assets can be salvaged after filing by purchase of them from the bankruptcy estate by the bankrupt or his spouse. But, of course, these opportunities will be limited because of the bankrupt's inability to raise substantial cash shortly after filing.

A typical situation in which it may be advisable to attempt to purchase from the trustee is when bankrupt owns an automobile valued in excess of the \$350 permitted by CCP §690.24. The trustee's market is a wholesale one, yet the vehicle's value to the bankrupt is often the retail cost. Thus, the bankrupt's offer of the lower wholesale book value (often Kelley's Blue Book), less any encumbrance, may very well be the best offer the trustee can obtain. By selling to the bankrupt, the trustee saves the expenses of sale and storage, and thus the bankrupt's estate is also benefited.

b. [§9.4.37] Arranging for Abandonment of Burdensome Asset.

The trustee is not expected to take possession of or sell any asset whose sale will not benefit the bankruptcy



estate, i.e., the unsecured creditors. This can benefit the bankrupt who, for example, failed to have a properly recorded declaration of homestead at the time of filing.

For purposes of illustration, assume bankrupt owns real property having a fair market value of \$15,000, valid liens or encumbrances of \$14,000, and therefore an equity of \$1,000. This could be a case for purchasing the equity from the trustee. See §9.4.36. However, it is more properly a burdensome asset case as few real estate sales can be made in bankruptcy courts without the services of real estate brokers whose commissions normally are six percent, or, in this case, \$900. The \$100 margin, in view of other expenses of sale, is insufficient to be of benefit to the general creditors. The asset is therefore burdensome.

Such an asset may be properly abandoned by the trustee on written application by the bankrupt. If the trustee agrees, the referee will make the order of abandonment ex parte. Otherwise, the order can be made only on noticed hearing. See §§9.3.33, 9.3.35-37 for further discussion and forms.

3. First Meeting of Creditors

a. Instructions to Client

(1) [§9.4.38] Sample: Letter to Client Advising Him of First Meeting

Copies: Two: Original for client, copy for file.



(name & address of client)

_____, 19__

Dear Mr. _____:

This is to advise you that the Bankruptcy Court has set
 _____, 19__, at _____.m., as the date and time
 for the first meeting of creditors in your matter.

The meeting will be held in Referee _____'s
 (name of Referee)
 courtroom, (room number and address of courtroom) _____.

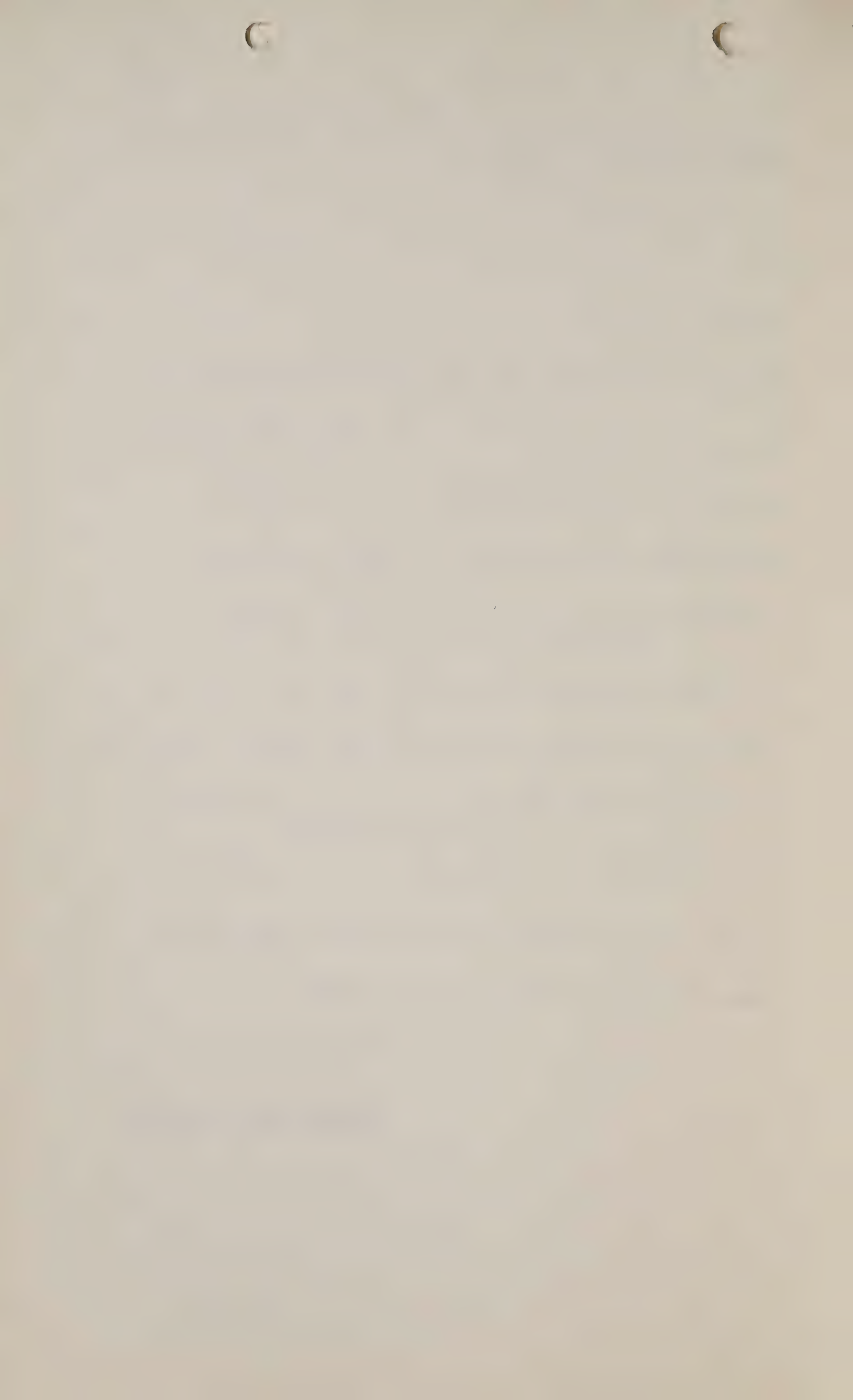
As I previously advised you, it is required by law that
 you be present at the time of the first meeting of creditors.

I will meet you in Referee _____'s courtroom
 (name of Referee)
 at approximately _____.m., on _____, 19__.

In the meantime, please do not hesitate to call if you
 have any questions concerning this matter.

Sincerely yours,

(Signature of attorney)
 (Typed name of attorney)

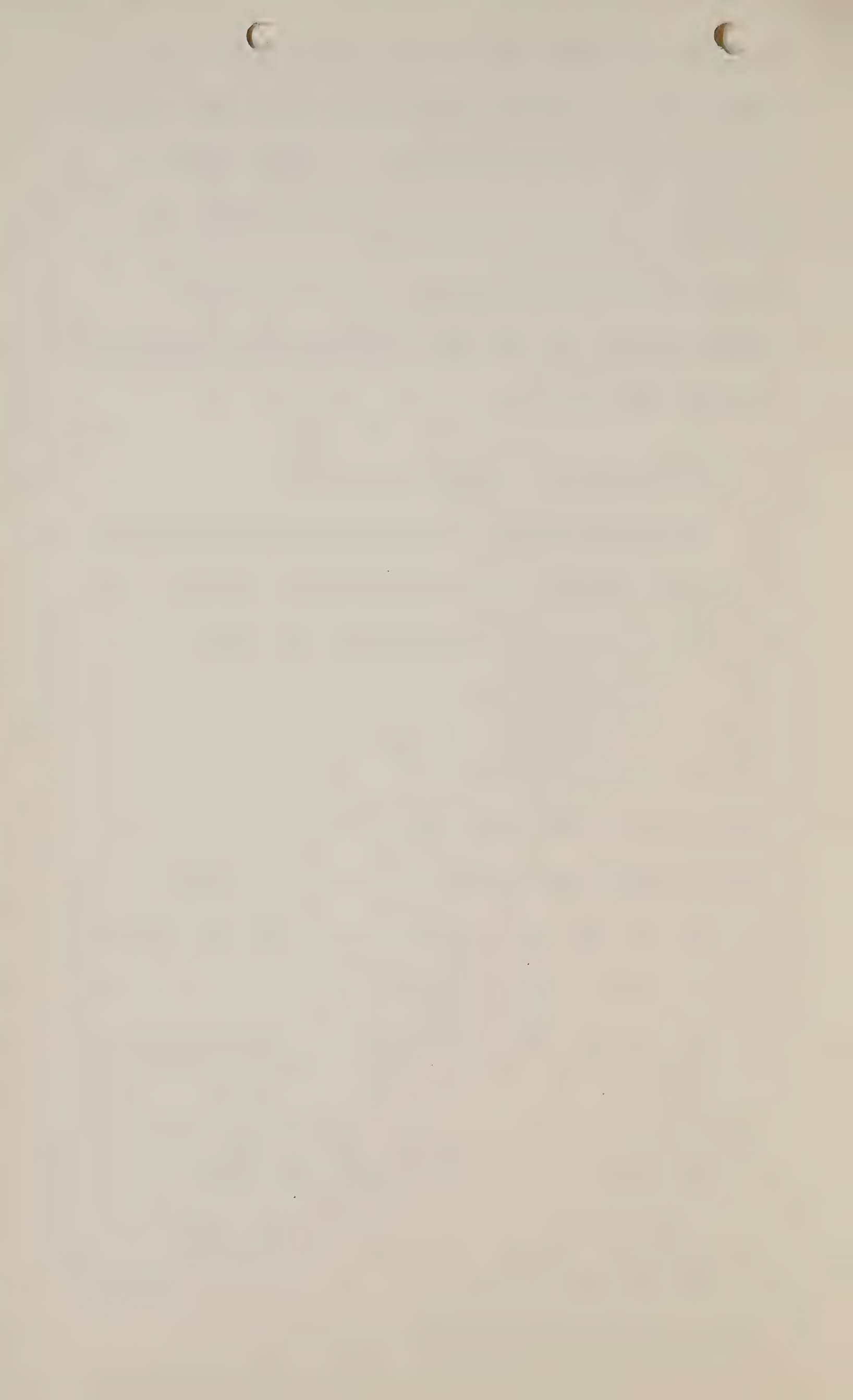


COMMENT: Your client will receive a notice of the First Meeting from the referee assigned to the case. Many attorneys prefer to follow up this notice with a reminder letter of their own. A returned letter may serve as a warning that the client has moved and possibly has not received the court's notice. (See Handling a Bankruptcy Case, Demonstration Case File (Cal CEB 1963).)

(2) [§9.4.39] Instructions Checklist

Often his appearance at the first meeting of creditors is the only court appearance the client will have made. It is likely he will be extremely nervous. An explanation in detail of the procedure is often reassuring. Points that should be covered in counseling the client prior to the first meeting (either at the initial interview or at a second interview shortly before the first meeting) are:

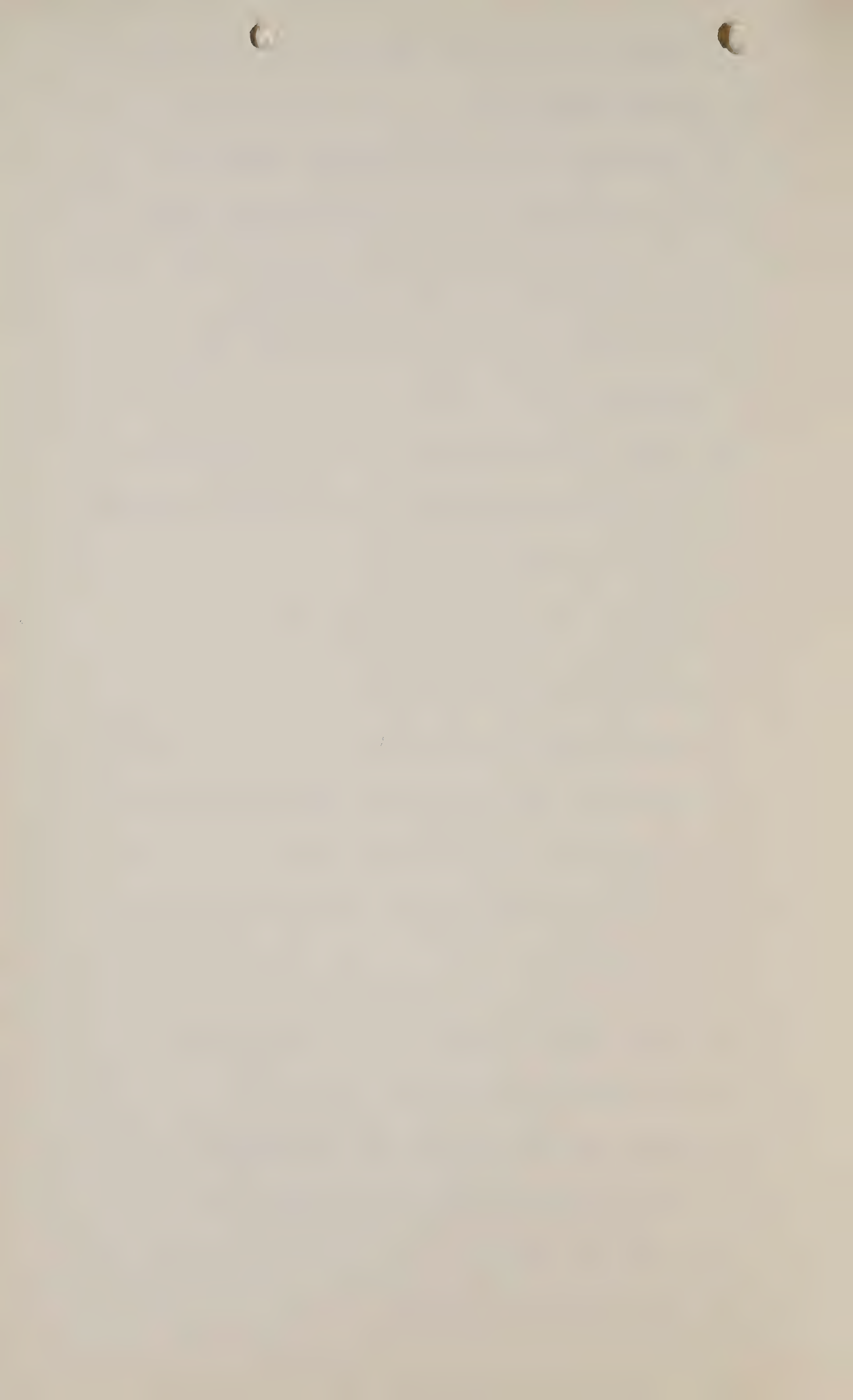
1. That his attorney will be present at the counsel table in the courtroom.
2. That the general procedure is brief so he must be on time.
3. That he will probably be asked the following questions:
 - a. His name
 - b. His present address



- c. Whether he is married and whether he lives with his wife
- d. His telephone number
- e. Where he works
- f. Whether he read all his papers before he signed them
- g. Whether the papers are correct to the best of his knowledge
- h. Whether he listed all his creditors
- i. Whether he listed all his assets and property
- j. Whether any property or assets in his wife's name or his children's name is not listed
- k. What kind of car he drives
- l. Whether the family has more than one car or the use of another car
- m. Whether his wages are under attachment
- n. Whether he had any money in the bank when he filed his papers
- o. Whether anyone owes him more than \$100
- p. Whether anyone is holding property for him
- q. Whether he has been in bankruptcy before
- r. Whether he has ever owned any real property
- s. If he owns his home, what is it now worth and what does he owe on it



- Whether he was actually residing in his home when it was homesteaded
- u. If he rents, whether the landlord is related to him. Whether he has an agreement with the owner whereby he can later buy the property
- v. Whether he has an interest in any other real property
- w. Whether he has transferred or given away anything of value in the last year and, if he made a transfer, what he got for it
- x. Whether he expects an income tax refund
4. That if he does receive an income tax check, he must not cash it. He must hand it to his attorneys or hold it until the trustee appointed at the first meeting tells him what to do with it.
5. That he should bring papers, such as the following, to the meeting:
- a. Legal papers concerning lawsuits either pending or adjudged against client
- b. Deeds or legal papers on any real property in which client has any interest (e.g., title insurance policies)
- c. Declaration of homestead



d. Leases

e. Insurance policies

f. Bank books or savings & loan passbooks

g. Stock or bond certificates (if any)

h. Records

6. That he should study his copy of the schedules to refresh in his mind the answers to the questions he will be asked.

7. That he should answer questions frankly and openly and tell the truth. Make it clear that he can lose his discharge or be subject to penalties for contempt of court. Tell him that he may invoke the 5th Amendment privilege against self-incrimination but that he will probably lose his discharge for doing so.*

*
Bankruptcy Act §14c(6) (11 USC §32c(6)) makes refusal to answer a material question approved by the court a ground for denial of discharge. Cases have held that failure to answer such questions under a claim of privilege justifies denial of discharge. But see Garrity v New Jersey (1967)

35 LW 4135, ; Spevack v Klein (1967) 35 LW 4140,



9. If his wife has also filed, that she will be called, but probably asked only if she would give the same answers as her husband (unless she works or has assets of her own).

10. Be SURE to tell the client where the courthouse is and, if possible, how to get there and where to park. See Cowans §§891-903.

b. [§9.4.40] Role of the Attorney

The attorney's role at the first meeting is to prevent certain things from going wrong that would endanger his client's discharge, i.e., seeing that his client is present on time, properly counseled, and that all necessary papers are available.

Typical situations requiring attorney's presence include:

(a) The court may issue an order that the bankrupt turn over property he no longer has and can no longer obtain to the trustee. If the objection on the grounds that the bankrupt no longer has the property is not raised at this time, it may be considered waived, and refusal to obey the order can be a ground of objection to discharge (see Cowans §892).

(b) A finance company may press the client to reaffirm at the first meeting. The attorney would be able to counsel the client against reaffirming.

(c) The client may appear to be concealing facts or



committing perjury when he may, in fact, be merely confused.

(d) Often documents appear at the first meeting that may reappear in later nondischargeability suits. The first meeting is a good time for the attorney to examine them.

(e) The attorney may also learn of possible grounds for objections to discharge and be better able to answer them when they are tried.

He should be prepared to examine documents, such as financial statements made by his client to finance companies, which may be the subject matter of later nondischargeability suits. He should also be prepared to protect his client with customary court procedures (objections, motions, etc.), if he feels examination is improper or that the referee has ruled improperly on a point of law, but since the first meeting is investigatory in nature, he should guard against turning it into a full-blown trial on the merits.

Cooperation with the trustee where such cooperation will not harm his client is advisable, since it may favorably affect the relationship of the client with the trustee. See Cowans §897.

c. [§9.4.41] Procedure at the First Meeting

There is a sequence of events generally followed at the first meetings of creditors. However, this sequence may

vary with the jurisdiction, and it is recommended that the attorney attend one or two first meetings at the Bankruptcy Court in his area before he appears to represent a client. This will give him an opportunity to familiarize himself with procedures which may be unique to his area.

The customary sequence of events is:

1. questioning of client by referee,
2. appointment of trustee,
3. questioning of the client by the trustee (In some jurisdictions, no trustee is appointed in no-asset cases.),
4. questioning by individual creditors or their representatives.

3. [§9.4.42] Amending the Petition, Schedules, or Statement of Affairs

The permission to amend filed bankruptcy papers and the proper procedure for so doing are set forth in General Order No. 11, which states:

The court may allow amendments to the petition and schedules on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules, and filed in triplicate. If amendments are made to separate schedules, the same must be made



separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed.

Examining the elements of this order shows:

1. This permission is discretionary with the court. Generally, amendments are permitted when errors or omissions occurred unintentionally, and when application for permission is made within a reasonable time.
2. The form of amendment is important. A proper procedure would be to file a signed and verified paper indicating at the top that it is a "Schedule_ _ _ as amended." Note that amendments to separate schedules require separate pages. Amendments can thereby be attached to the appropriate original schedule.
3. The general order indicates that an application for leave to amend should be filed, and that it should set forth the reason for the amendment. A form is set forth in §9.4.45.

a. [§9.4.43] Amending Asset Schedules

The most common reason for an amendment of asset schedules is to include an omitted claim of exemption in Schedule B-5 although occasionally an amendment is necessary to avoid statutory sanctions such as objections to discharge



for failure to include a material asset in the bankrupt's schedules. Bankruptcy Act §14c(1), 11 USC §32(c)(1). It is necessary that the amendment be made seasonably, i.e., "while the property is still in the hands of the trustee, unaffected by adverse rights." Collier ¶6.08 at 131; Goodman v Curtis (5th Cir 1909) 174 F 644; Bankruptcy of Fowler (ED Pa 1940) 35 F Supp 9. Cases hold that when the omission is intentional, rather than the result of mistake or excusable neglect, the amendment will not be permitted. See Cowans §941.

Amending the asset schedules will not protect the residence of the client whose attorney has failed to declare a homestead prior to filing the petition in bankruptcy, since Bankruptcy Act §6 (11 USC §24) requires adherence to state exemption laws and their procedural requirements. However, where the formal state requirement is merely the filing of a claim of exemption in the state courts, listing on a B-5 schedule is sufficient. As indicated above, exemptions are not automatic and must be claimed affirmatively on Schedule B-5. If property is not so claimed, it cannot be set aside as exempt by the trustee. Nor can property be claimed exempt if it is not disclosed in the asset schedules (B-1 through B-4). However, an oversight, such as failure



to claim homesteaded real property exempt on Schedule B-5 normally can be cured by amending that schedule. In view of the Bankruptcy Court's status as an equity court and in light of the purposes of both the Bankruptcy Act and the exemption statutes, the laws are liberally construed and amendments are usually allowed so long as the omission was an innocent one. Bankruptcy of Roark (ED Ky 1939) 28 F Supp 515; Bankruptcy of Fowler (ED Pa 1940) 35 F Supp 9.

b. [§9.4.44] Amending Liability Schedules

The purpose of amending liability schedules is, of course, to avoid the problem of the unlisted creditor on whom the discharge in bankruptcy has no effect under Bankruptcy Act §17a(3) (11 USC §35(a)(3)). The problem of when the amendment is sought is crucial in this area since an undue delay can effectively deprive the creditor of his right to object to discharge. If the amendment is made after the first meeting in a case ^{in which} there has been a trustee appointed, the creditor is deprived of his choice as to trustee; if the amendment is made after the time for filing claims has expired, he has lost almost all his rights. For these reasons, amendment after the first meeting will be allowed only upon showing of good cause and will almost never be allowed after the time for filing claims has expired, except



in a few rare no-asset cases. See Collier ¶7.05.

Amendment is not permitted to exclude a debt that was duly listed even though the debt is nondischargeable.

Bankruptcy of Bernard (2d Cir 1922) 280 F 715.

c. Procedures

(1) [§9.4.45] Form: Application for Leave To Amend Schedules

Copies: Two: One original filed with bankruptcy clerk, and one for file.



FILED: _____

_____, Referee
 Attorney(s) for Bankrupt _____

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA

_____ DIVISION

IN THE MATTER OF

No. _____

Bankrupt _____

APPLICATION FOR LEAVE TO

AMEND SCHEDULE(S) _____

_____ respectfully alleges:

I.

Applicant is the above-named bankrupt.

II.

His Voluntary Petition in Bankruptcy and Schedules of
 Liabilities and Assets were filed on _____, 19__.

III.

On Schedule(s) _____, there _____ omitted/
 was/were _____
 incorrectly listed/(etc.) inadvertently/unavoidably _____
 (Description of item or individual omitted, incorrectly listed,
 etc. _____, the reason for the _____
 omission/incorrect listing/etc. _____
 was that _____
 (Give reason) _____

WHEREFORE, applicant prays for leave to amend Schedule(s)

_____ to _____ said _____
 include/correct _____ (Description of item or
 individual omitted, incorrectly listed etc.) _____



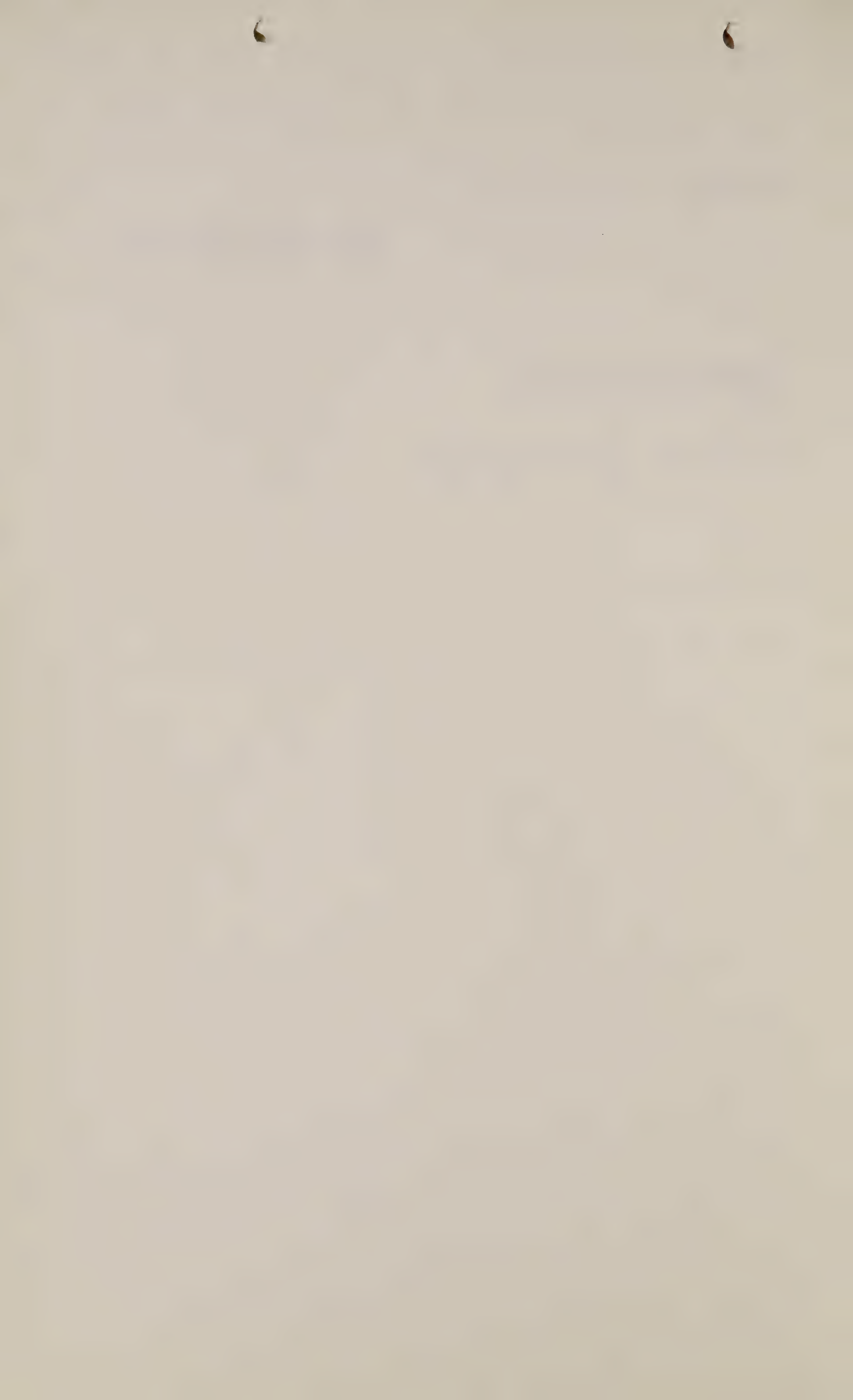
IV.78

Dated: _ _ _ _ _

(Signature of applicant)
(Typed name of applicant)

(Signature of attorney)
(Typed name of attorney)

Attorney for (Name of applicant)



COMMENT: Note that the form includes the elements contained in General Order 11. If the case has been referred to a referee, the papers should be filed with him. Although they may also properly be filed with the clerk of Court, to do so might cause confusion and delay in attaching the amendment to the schedules. See Cowans §§943, 1194.

(2) [\$9.4.46] Form: Order Granting Leave To Amend Schedules

Copies: Three--Two original copies filed with referee, and one for file.



UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA

_____ DIVISION

IN THE MATTER OF

No. _____

____ Bankrupt _____

ORDER GRANTING LEAVE
TO AMEND SCHEDULES

This matter was heard ex parte, notice not being
required, on _____, 19____, at _____
(Name of city) _____

before the undersigned Referee in Bankruptcy. Good cause
appearing therefor

IT IS ORDERED, that applicant be granted leave to amend
Schedule(s) _____.

Dated: _____

Referee in Bankruptcy



The safest and simplest way of ensuring that the amendment takes the proper form is to use the relevant official schedules that need to be amended, inserting the word "Amended" before the title of the schedule. When the original schedule contains several pages, it is generally sufficient to file an amended final page with amended totals.

In any event, remember that General Order 5(3) requires that: "Each paper filed shall contain a caption setting forth the name of the court, the title of the proceeding, the docket number, and a brief statement of the character of the paper."

Note also the requirement of General Order 11 that amendments to separate schedules must be made separately. Enter each amendment of a different schedule on a separate page.

Three copies of the proposed amendments should be filed with the copies of the Application and the Order. This is necessary because the amendments will be appended to the original schedules filed in triplicate.

(4) [§9.4.48] Sample: Notice to Creditor

Copies: One for each creditor and one file copy containing list of creditors.

(Name of Creditor)

(Date)

 This is to notify you that Mr. _____, has retained
 (Name of bankrupt)

this office to represent him in his Petition in Bankruptcy

_____, at
 (Name of court) _____ (Address) _____,
 (City) _____.

Mr. _____ has amended his Schedules
 (Name of bankrupt)

to list you as a _____ creditor. The
 secured/unsecured

first meeting of creditors was held on _____, 19____,

before Referee _____, and the final date
 (Name of Referee)

for filing claims is _____, 19____. Please address

further communications with regard to Mr. _____'s
 (Name of bankrupt)

obligation to this office.

Sincerely yours,

Attorney at Law



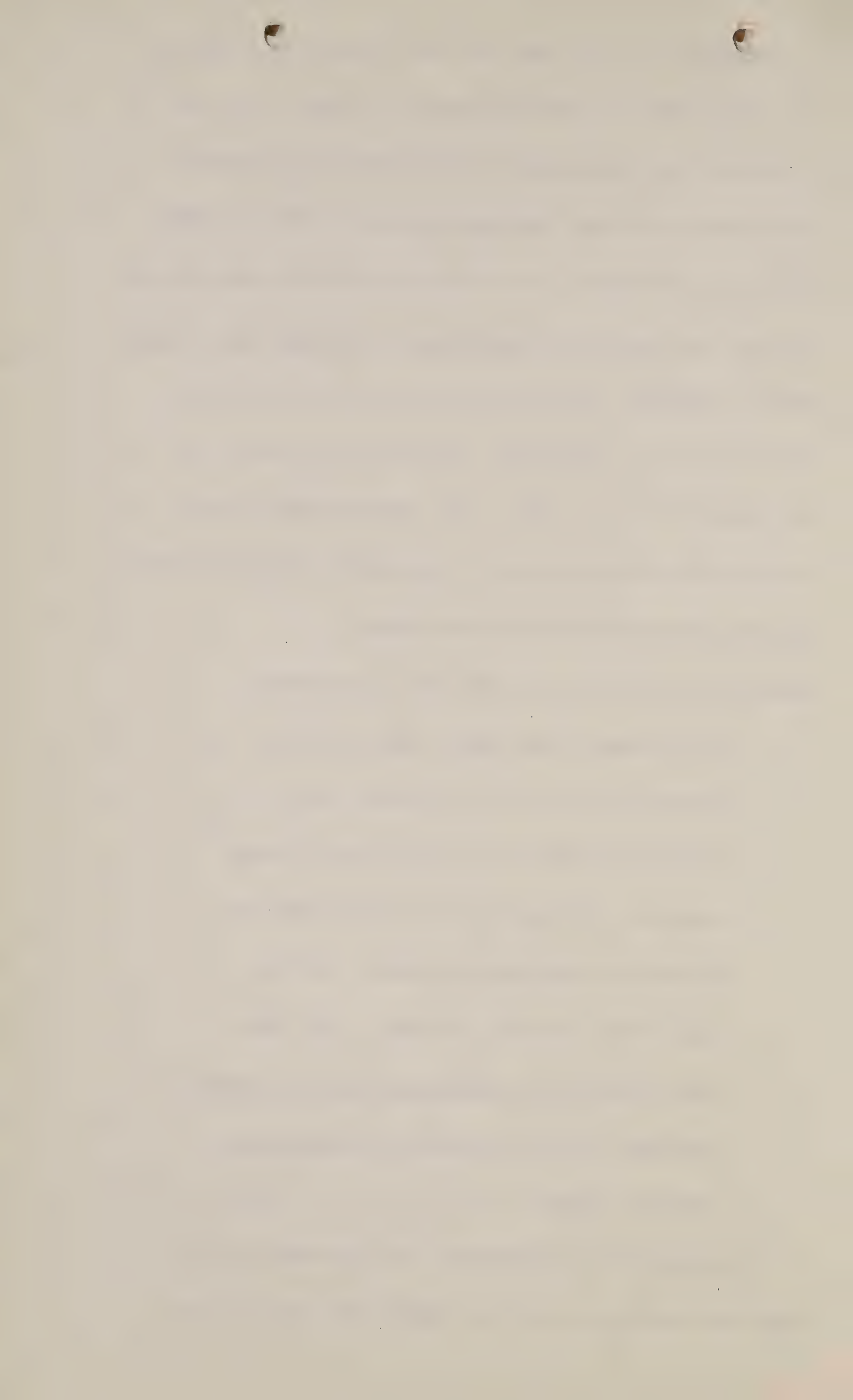
COMMENT: The court does not send a notice to a creditor when an amendment is made to include his name. If he has no notice of the proceedings, the discharge will generally not be valid as to him. See Bankruptcy Act §17a(3), 11 USC §35(a)(3); Cowans §943. . It is therefore wise for the attorney to notify the creditor by registered or certified mail, return receipt requested. This may be done either by using the above form or by sending him a copy of the amendment. If the amendment is made prior to the first meeting, it may be possible to obtain a copy of the referee's notice of first meeting and send that in the same manner.

Bankruptcy Act §17a(3) 11 USC §35(a)(3) provides:

A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as ... (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy....

[Emphasis added]

Relying upon this provision, some attorneys do not apply for amendment at all but simply send notice to the



(PROOF OF SERVICE BY MAIL -- 1013a, 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the county
of _____ . I am over the age of eighteen

years and not a party to the within above entitled action; my

_____ address is: _____
business/residence

On _____ , 19__ , I served the within _____

_____ on the _____ in said action, by placing a
true copy thereof enclosed in a sealed envelope with postage
thereon fully prepaid, in the United States post office mail
box at _____ addressed as follows:

I certify (or declare), under penalty of perjury,* that the
foregoing is true and correct.

Executed on _____ at _____ ,
(date) (place)
California.

Signature

*proof of service by mail forms, being signed under penalty
of perjury, do not require notarization.



creditor and file an affidavit of mailing with the referee.

See §9.4.49 below. However, the attorney should ascertain

the feelings of the particular referees with whom he will

be dealing before undertaking such a procedure. If the

referee does not approve of this method, it is unwise to

follow it although it may be technically proper. See Cowans

§942.

(5) [§9.4.49] Form: Affidavit of Mailing

Copies: One filed with clerk of court, one for each

creditor and one for file.



5. [§9.4.50] Dismissing the Proceedings

Where an asset of substantial value is discovered after filing, or when an error such as failure to homestead real property has been committed, or when the client receives an inheritance within six months of filing, it may be advisable for the attorney to recommend that the bankrupt seek to dismiss his proceeding. See ^{Bankruptcy Act} / §59(g), 11 USC §95(g);

There is no absolute right of dismissal. Dismissal can be obtained only upon written application to the Court and hearing after notice to all creditors. ^{Bankruptcy Act} / §59(g), 11 USC 95(g) see §9.4.51. Permission to dismiss then rests in the sound discretion of the referee. The referee retains this discretion even over creditor objections. See Bankruptcy Act §§59(g), 38; ^{11 USC §§95(g), 66;} / Bankruptcy of Strunks Lane & Jellico Mountain Coal Co. (DC Ky .. 1946) 64 F Supp 731.

It is important for counsel in such circumstances to convince both the referee and interested creditors that creditors' interests are better served by a dismissal. The attorney also must be sure that the dismissal will be without prejudice.

Except in unusual circumstances, the trustee will not be able to object to dismissal, although he may be entitled to indemnification for services rendered and expenses incurred. See Bankruptcy Act § , 11 USC § ; Cowans



§§937-940, Colliers ¶59.15.

a. ¶9.4.51] Form: Application for Dismissal

Copies: Two: One filed with referee and one for file.



b. [§9.4.52] Form: Order of Dismissal

Copies: Two: One filed with referee and one for file.



6. [9.4.53] Determining Dischargeability of a Particular Debt in State Court

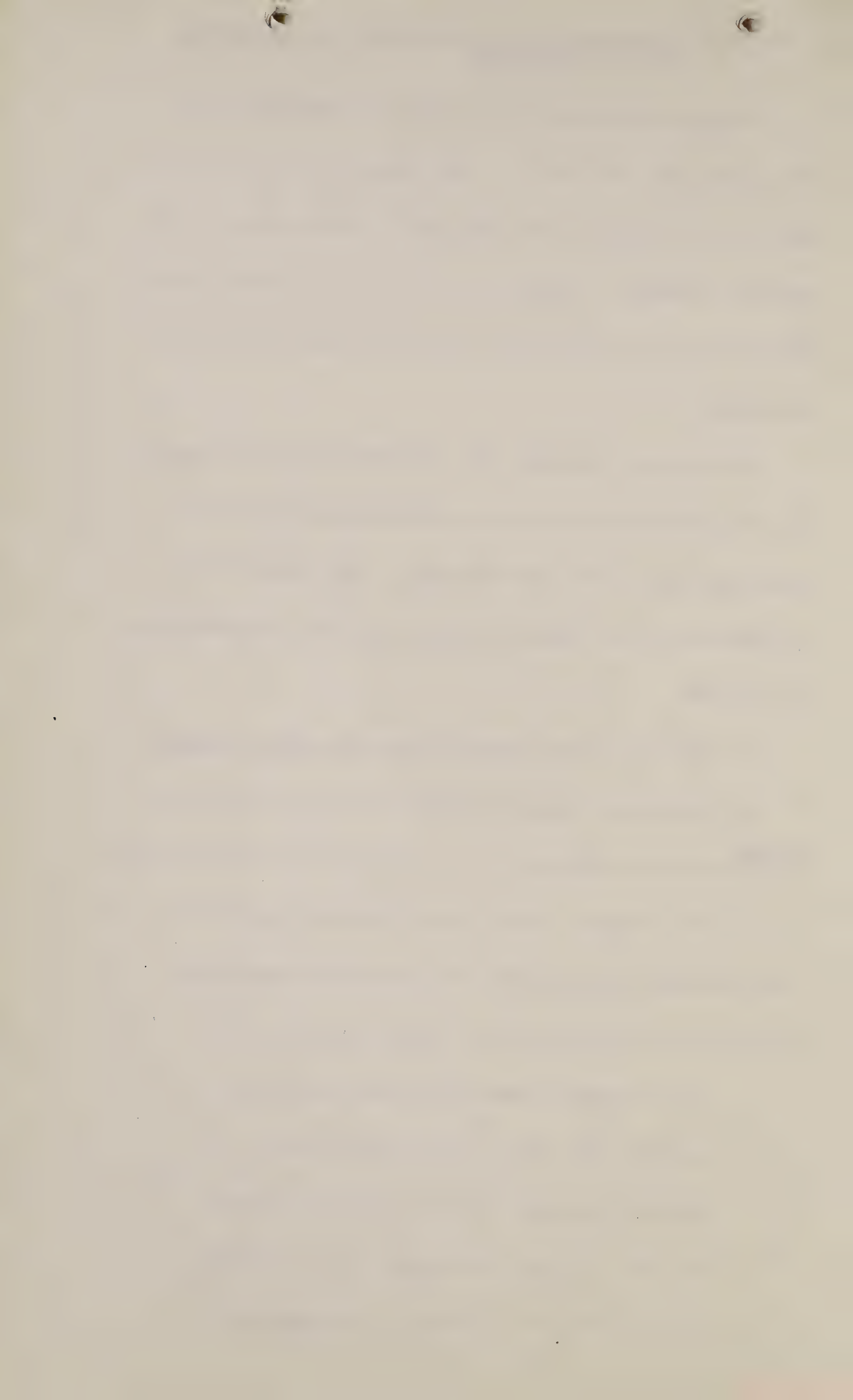
Nondischargeable debts are listed in Bankruptcy Act §17, 11 USC 35. See §9.1. . The bankruptcy court can determine dischargeability, but only on stipulation of both parties. Disputes normally arise in the state courts where suit is filed on a debt that the debtor contends has been discharged.

It has been contended that the bankruptcy court should make the determination as to the dischargeability of a particular debt. See Cowan §930-931. For a form of an application to the bankruptcy court for such a determination, see §9.4.66.

a. [§9.4.54] Suit Charging False Financial Statement

By far the most common lawsuit arising from bankruptcy charges that the debt in question is not discharged because the debtor provided the creditor with a false financial statement, thus bringing the debt within the purview of Bankruptcy Act §17a(2) (11 USC §35(a)(2):) which states in part:

A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as...(2) are liabilities...for obtaining money or property on credit or obtaining an



Extension or renewal of credit in reliance upon a
 a materially false statement in writing respect-
 ing his financial condition made or published
 or caused to be made or published in any manner
 whatsoever with intent to deceive...."

[Emphasis added] The issues this raised in litigation
 on §17a(2) are these:

1. "Obtaining money or property." This point is rarely at issue. The debtor is rarely able to contend that he did not get some money or credit.
2. "An extension or renewal of credit." Although this point is not litigated, it should be noted that if there has been an extension or renewal on the basis of a false financial statement the entire debt to the financing agency is nondischargeable, not merely the portion involved in the rewrite.
 Bankruptcy Act §17a, 11 USC §35.

3. "In reliance." Here is the major litigable point in this section. It is the practice of some finance companies to tell the debtor, "Just list a few of your debts, you needn't list them all." It is the practice of at least one company, even when they receive collateral far in excess of the amount of the loan, to require a chattel mortgage on the household furnishings, simply because it is more than likely that these goods have been previously pledged. Some of the more recent cases have been favorable to the

debtor claiming that there is no reliance, particularly where the contention is raised that the debtor was tricked into providing the misinformation. See Cowans/^{§450,} Colliers ¶17.02.

4. "Materially false." "Material" is the word in the section upon which there is not as much case law/ as on the subject of reliance. However, it appears logical that where the client has, in fact, listed his major obligations, the attorney is under an obligation to defend on the lack of material falsity. The fact that the statement is actually false is rarely at issue. See Cowan's §450 for fuller discussion of materiality.

5. "In writing respecting his financial condition made or published or caused to be made or published in any manner." This is rarely an issue. Debtors generally sign any paper the finance company gives them. The publication is sufficient here in that the document is normally prepared by the client at the office of the financing agency and given to the agency at the time of preparation.

6. "With intent to deceive..." This is clearly a litigable issue. If the client can show that he acted under the instruction of the finance company employee, it is certainly arguable that he did not have the requisite intent. However, some cases hold that if the schedules filed with the petition in bankruptcy differ materially



from the financial statement, a rebuttable presumption of intent is raised. See Cowans §451, Colliers ¶17.02.

The procedures in litigation on this issue do not differ in any marked way from ordinary civil litigation. Most of the cases with which legal aid offices are concerned will arise in the municipal courts. Those that arise in the Superior Courts may involve additional procedures, such as a pre-trial conference. Civil trial procedures are discussed in California Civil Procedure Before Trial, California Civil Procedure During Trial, and California Civil Appellate Practice (Cal CEB 1957, 1960, 1966). Discovery techniques such as the interrogatory may be used effectively in the litigation of such cases. A sample form of interrogatory is set forth in §9.4.55. A general denial is used by the debtor in such actions together with the affirmative defense of a discharge in bankruptcy. A sample answer is set forth in §9. The points discussed above with regard to materiality, reliance, intent, etc., are matters of proof and not matters of pleading.

[§9.4.55]
(1) / Form: Interrogatories

Copies: One filed with creditor, one copy with court

(with certificate of service attached). One file copy.

 Attorney for -----

(TITLE OF COURT)

----- Plaintiff -----

vs

----- Defendant -----

No. _____

WRITTEN INTERROGATORIES

To: -----, Plaintiff, and -----
 ----- (Name of plaintiff) ----- (Name of attorney(s))
 ----- attorney(s).
 his/their

Defendant requires that -----
 ----- (Name of defendant) -----
 answer under oath, pursuant to CCP §2030 the following
 interrogatories:

1. What is the content of the Financial Statement?

(A copy of same attached to your answers will suffice)

2. Has defendant had previous loans with plaintiff?

a) If so, how many?

b) If so, on what dates were these loans?

c) If so, how much new money was advanced on each
 occasion?

3. Was a financial statement given by defendants on each occasion?

If so, what was the content of each financial statement? (A copy of each attached to your answers will suffice)

4. Is the loaning officer who approved the loan still associated with plaintiff?

If so, in what capacity?

5. Were renewal applications taken at the time of each rewrite?

If so, what is the content of each renewal application?

(A copy of each attached to your answers will suffice)

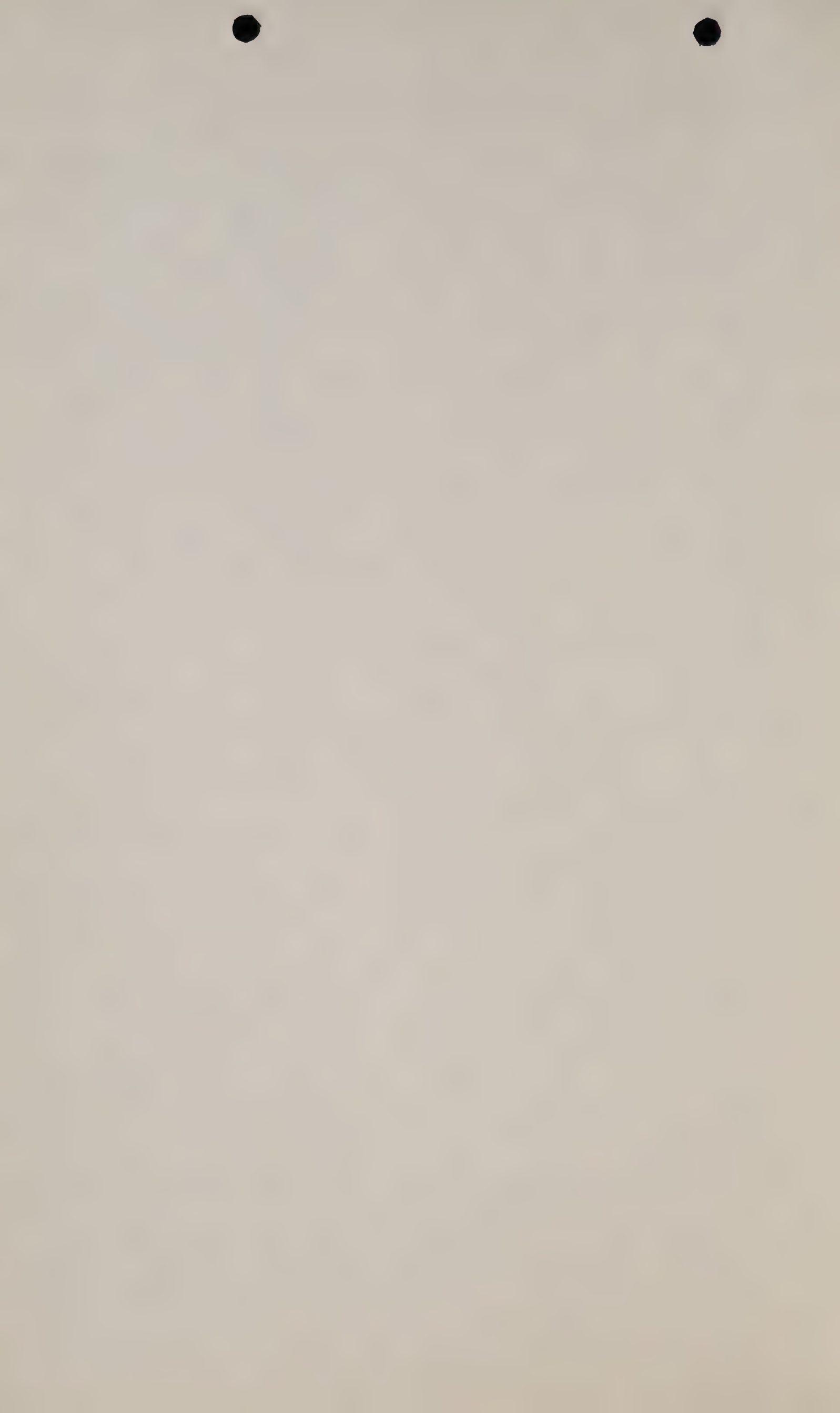
6. Does plaintiff keep a collection or event history on each of defendant's loans showing chronologically the events, conversations, duns, etc., that occur during the existence of said loan?

If so, what is the content of the history on each loan?

(A copy of each attached to your answers will suffice)

7. What obligations (name of each creditor and amount) does plaintiff claim meet all the following criteria:

1. Defendant owed money at time of loan and Financial Statement



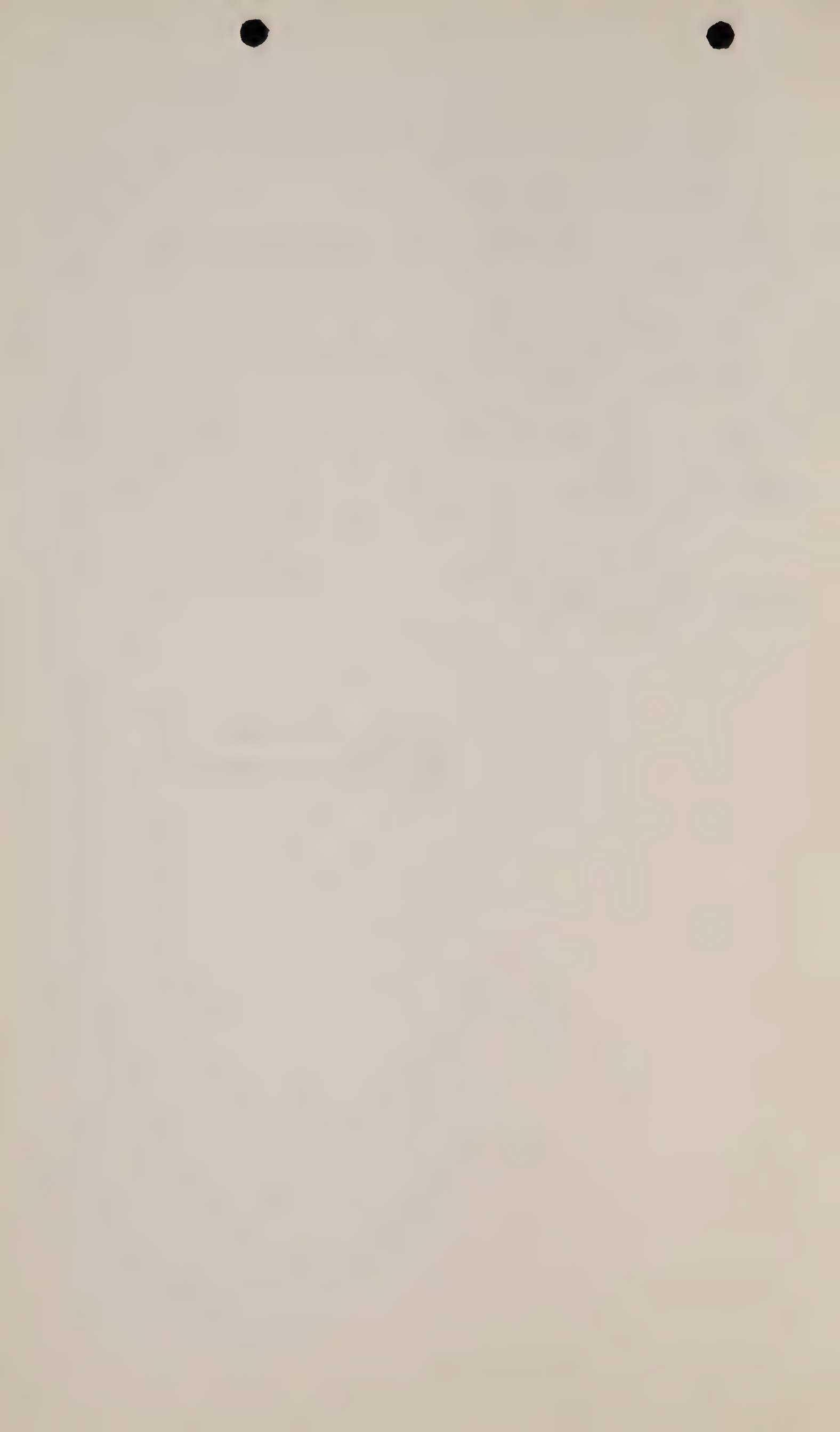
2. Obligation was not listed on Financial Statement
3. Obligation was material
4. Loan would not have been made if plaintiff knew of
obligation

Answer must be served upon the undersigned within
fifteen days after the service of these inter-
rogatories. CCP §2030

Dated: _ _ _ _ _ , 19 _ _ .

(Signature of attorney for
defendant)

(Typed name of attorney for
defendant)



COMMENT: These interrogatories were provided by Mr. Robert Ward, an attorney from Oakland, California. The interrogatory is an inexpensive and most effective means of discovery. Often the result of filing interrogatories is a dismissal of the action. This result occurs because attorneys for collection agencies or finance companies do not feel that, in many cases, the expense of the time necessary to answer the interrogatory is warranted by the size of the claim. A defense legitimately and forcefully pressed is the best protection for all debtors against excesses by lending agencies who have for too long accepted the default judgment as their due.

(2) [§9.4.56] Form: Answer



----- Plaintiff -----
vs

----- Defendant -----

No. -----

ANSWER

-----, defendant, answers
the complaint on file, admits, denies and alleges:

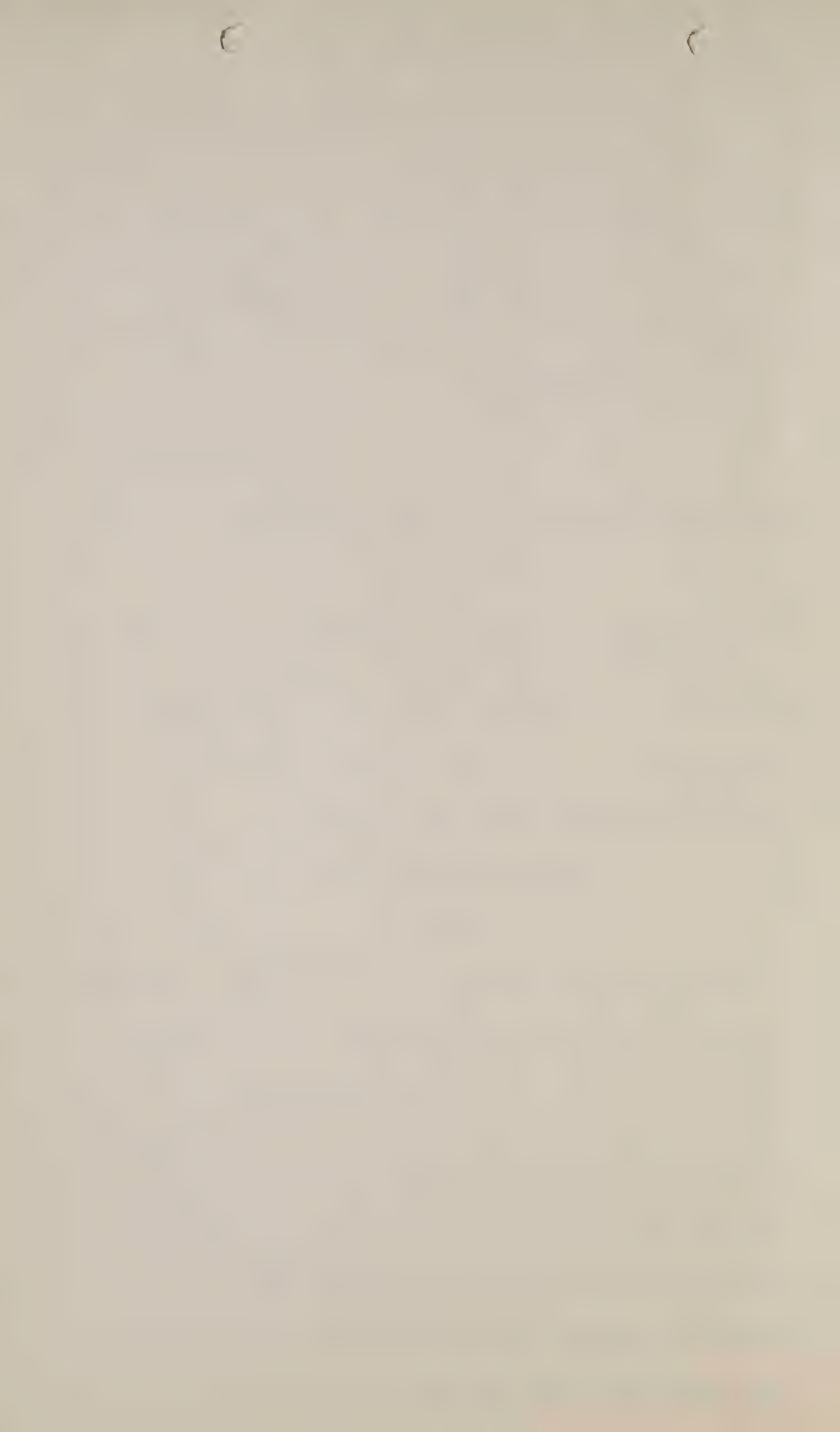
I

Denies generally and specifically, each and every, all
and singular the allegations contained in paragraphs (Number -----
of paragraph) ----- and specifically denies that he is
indebted to plaintiff in any sum whatsoever.

FIRST AFFIRMATIVE DEFENSE

II

Defendant alleges that on -----, 19____, he was
adjudged a bankrupt by the United States District Court for
the ----- District of California, -----
Division in proceedings No. -----, and received
his final discharge in bankruptcy on -----, 19____;
that plaintiff had actual notice of this filing and adjudi-
cation, and plaintiff holds the obligation subject to this
defense and all of said defenses.



WHEREFORE, defendant prays that plaintiff take nothing
by its complaint and defendant recover his costs.

(Signature of attorney(s))
(Typed name of attorney(s))

I declare under penalty of perjury:

That I am the _____, Defendant, in the above entitled
action; that I have read the foregoing

ANSWER and know the contents thereof;

that the same is true of my own knowledge, save and except
the parts therein stated on information and belief, and that
as to these parts I believe them to be true.

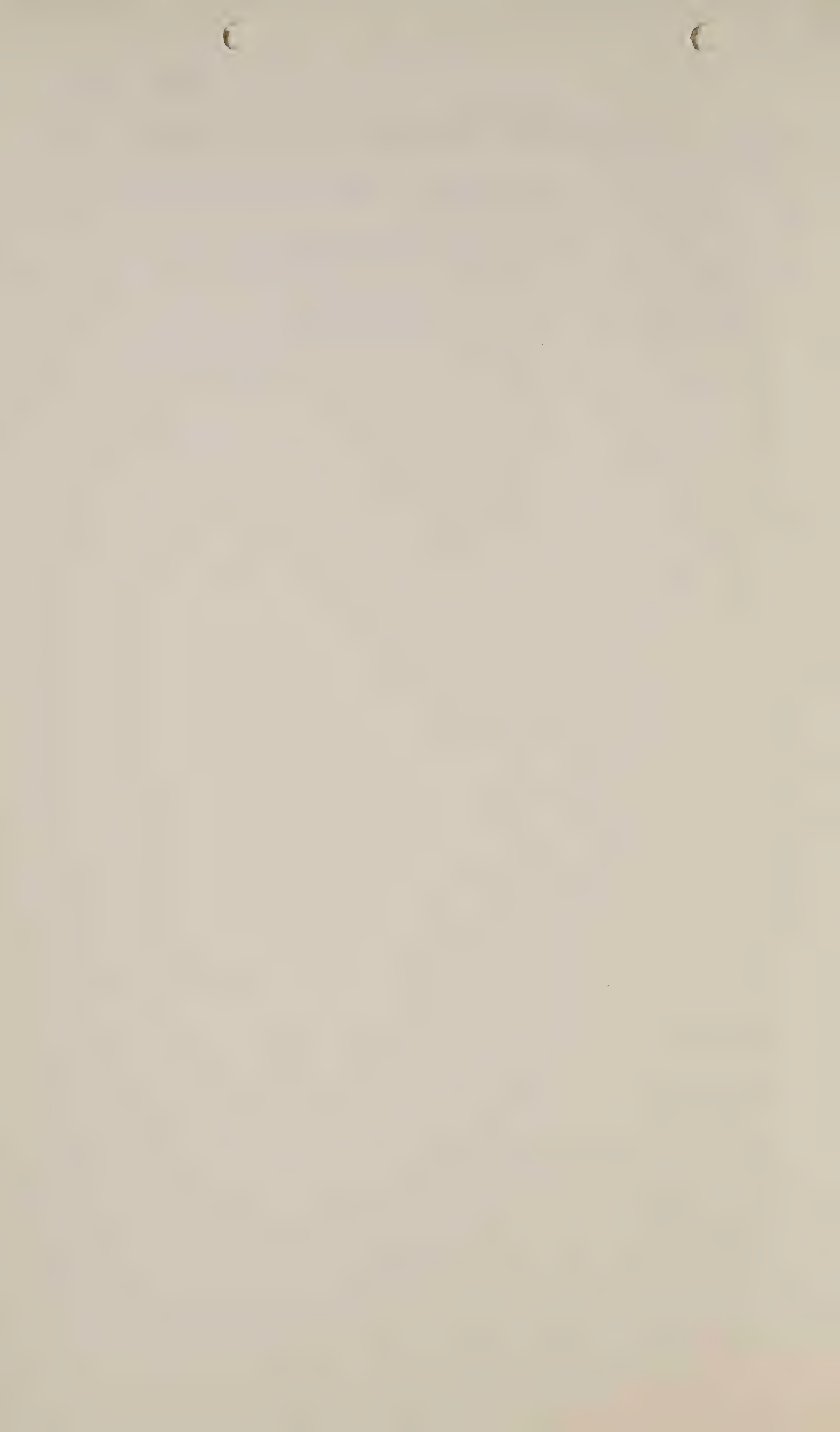
Dated: _____

(Signature of defendant)
(Typed name of defendant)



COMMENT: A general denial is sufficient to put the points discussed in the trial memo below at issue. It is, however, necessary to plead the discharge affirmatively.

(3) [§9.4.57] Form: Trial Memorandum



COMMENT: While a trial memorandum is not required, most trial judges welcome a memorandum on the points that will be raised during the course of the litigation. The work done for a trial memorandum may, of course, be put to good use in the event an appeal is taken.

b. [§9.4.58] Fraud Suits

Bankruptcy Act §17(a) (11 USC§35(a)), also provides that:

A discharge in bankruptcy shall release a bankrupt from all of his provable debts . . . except . . .

(2) . . . liabilities for obtaining money or property by false pretenses or false representations

Litigation of this nature may arise because a debtor has made use of a charge account or revolving credit account when he knew that he was going to take bankruptcy. Cases have held that the representation must be knowingly and fraudulently or recklessly made. Marer v Meyers (1946) 314 Mich 471, 22 NW^{2d} 869. Reliance is a necessary element of any fraud complaint and this action differs little from any other fraud action. For a discussion of fraud actions

Chapter ;
generally, see / Cowans §§442-445, Collier ¶1702.

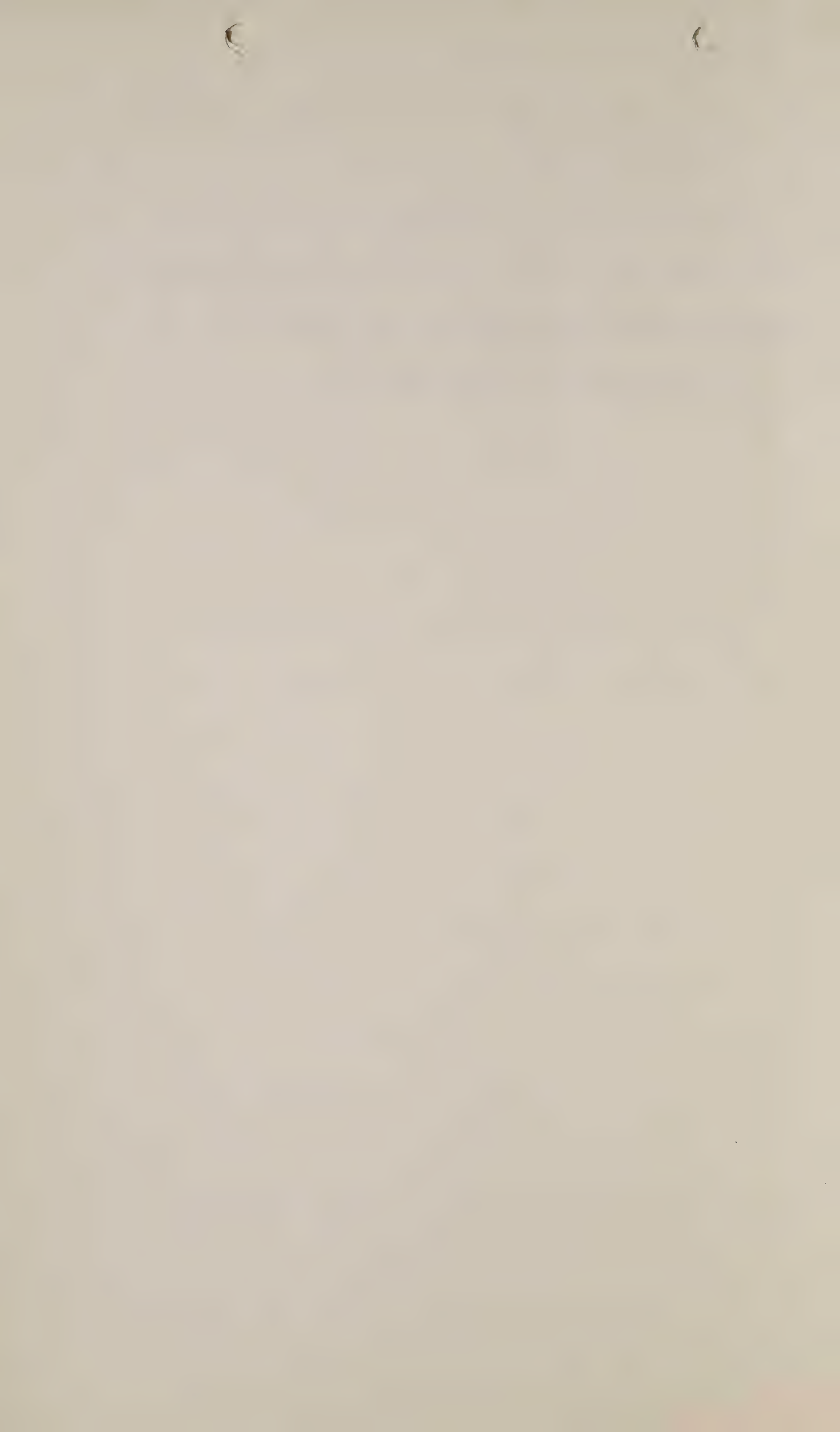
(1) [§9.4.59] Form: Interrogatories



(2) [§9.4.60] Answer

The same answer as that set forth in §9.4.56 may be used in this type of action. A general denial and affirmative defense of discharge in bankruptcy are sufficient.

(3) [§9.4.61] Form: Trial Memorandum



COMMENT: See comment, §9.4.57.

c. [§9.4.62] Suit Charging Conversion of Security

No discharge is available for debts that "are liabilities . . . for willful and malicious injuries to the . . . property of another" Bankruptcy Act §17a(2), 11 USC §35(a)(2). The cases have held that an injury to property rights, as through a conversion, is a willful and malicious injury within the terms of this exception. This type of action is generally brought where property bought under a conditional sales contract is sold by the debtor. First Nat'l Bank v Padjin (1965) 61 Ill App 2d 310, 21 NE2d 332. This is a difficult case to defend but there are some cases which have found the requisite willfulness missing. See Cowans §§454-455, Collier ¶17.03.

(1) [§9.4.63] Form: Interrogatories



(2) [§9.4.64] Answer

See §9.4.56. This form of answer is appropriate for a conversion action.

(3) [§9.4.65] Form: Trial Memorandum



7. [§9.4.66] Determining Dischargeability in Bankruptcy
Court: Form: Application



COMMENT: As noted above, the bankruptcy court often will refuse to entertain a motion or an action to determine dischargeability. It is wise to ascertain the practice in the particular court before presenting an application such as the above. This form is reproduced from Cowans.

8. [§9.4.67] The Final Meeting of Creditors

The final meeting of creditors is not held in a no-asset case; thus, many of the bankruptcies handled by legal aid offices will not require a final meeting. The purpose of the final meeting is to allow the trustee to present his accounting to the court and to the creditors. Although the bankrupt and his attorney receive notification of the final meeting, attendance by either or both is not required. See Bankruptcy Act §55e, 11 USC 91e; Cowans §946; Colliers ¶55.03.

9. [§9.4.68] Closing the Case

As indicated in §9. , the filing of the petition acts as an adjudication. Bankruptcy Act §18f, 11 USC §41(f). The bankrupt has control of his earnings after the date of filing and all other property he receives after that date with the exception of property noted in part of §70a of the Bankruptcy Act (11 USC §110(a)), set forth as follows:

All property, wherever located, except insofar



as it is property which is held to be exempt,
which vests in the bankrupt within six months
after bankruptcy by bequest, devise or inheritance . . . shall be free and discharged from
any transfer made or suffered by the bankrupt
after bankruptcy.

All property . . . in which the bankrupt
has at the date of bankruptcy an estate or
interest by the entirety and which within
six months after bankruptcy becomes transferable in whole or in part solely by the
bankrupt shall . . . vest in the trustee
and his successor or successors . . . as
of the date of bankruptcy.

Discharge takes place after the expiration of the time
limit for filing objections to discharge stated in the notice
of first meeting unless there is an objection filed.

Bankruptcy Act §14b, 11 USC §32(b). If an objection is
filed, discharge takes place after a hearing on the objection,
provided that the ruling at the hearing is favorable to the
bankrupt.

No formal notice of discharge is required to be mailed
to the bankrupt or to his attorney. It is therefore good
practice for the attorney to request from the referee a



certified copy of the discharge (See §9.4.64), and to contact the client and have him come in to pick up the discharge. At that time the attorney can offer his client postbankruptcy counseling discussed in §§9.5. - 9.5. .

a. [§9.4.69] Form: Discharge of Bankrupt



UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF CALIFORNIA

_____ DIVISION

IN THE MATTER OF _____)

NO. _____

)

_____ Bankrupt _____)

DISCHARGE OF BANK-
RUPT

_____)

AT _____, IN THIS DISTRICT, ON _____

DAY OF _____, 19__.

It appearing that _____ of the City of
(Name of bankrupt)

_____, in the County of _____,

State of California, was duly adjudged a bankrupt on a

petition filed by him on the 1st day of _____, 19__;

and _____ (if applicable)

It further appearing that objections to the discharge

of the bankrupt were filed and, after due notice by mail,

were heard and were not sustained;

It is ordered that _____ be, and
(Name of bankrupt)

he hereby is, discharged from all debts and claims which are

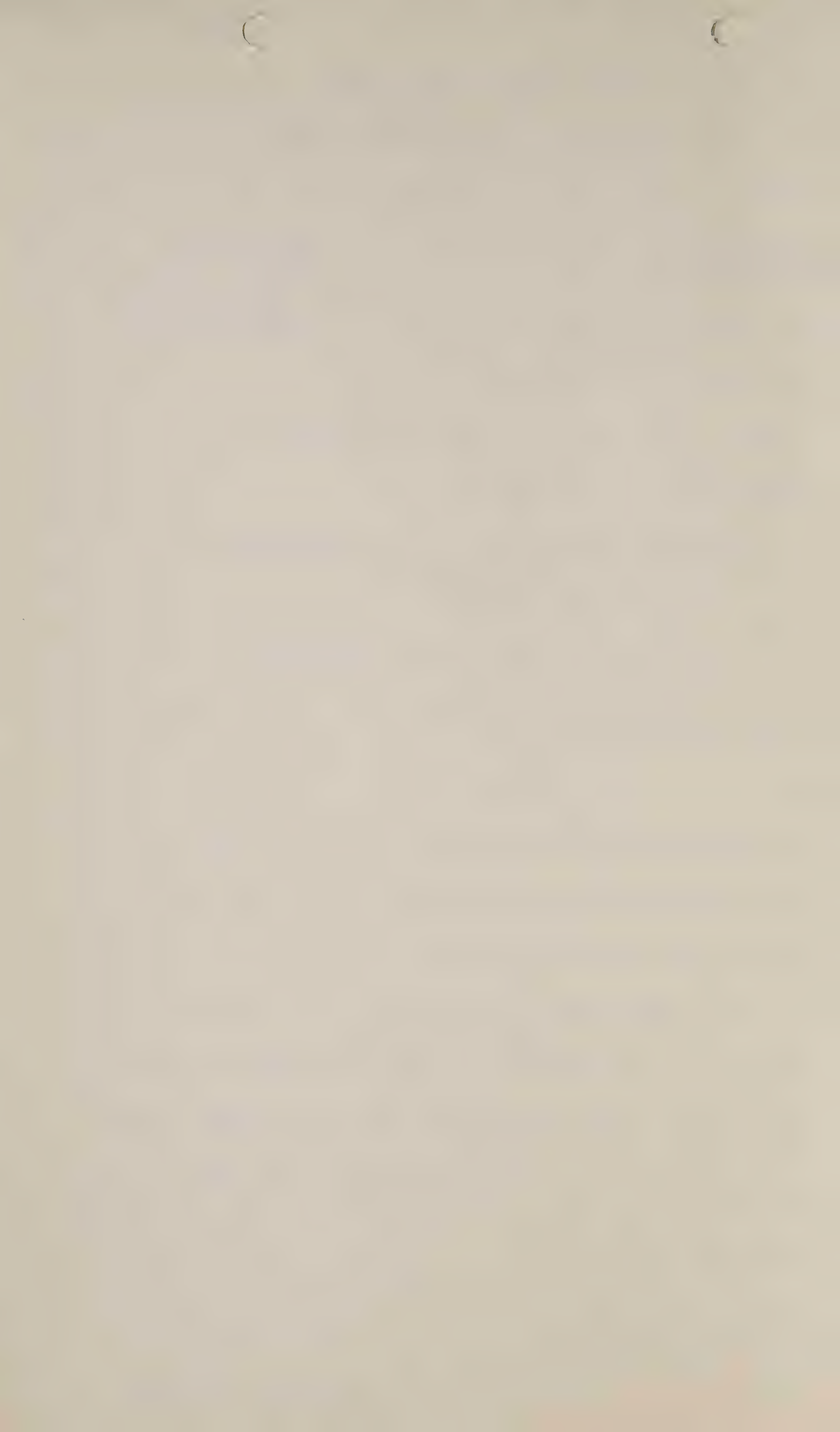
made provable by the Bankruptcy Act against his estate, except

debts that are, by the Act, excepted from the operation of

a discharge in bankruptcy.

Dated: _____, 19__

(Signature of referee)
(Typed name of referee)



COMMENT: This may be obtained from the office of the referee.

It may be useful to attach a copy of this discharge to an answer in a state suit on a discharged debt.

b. [§9.4.70] Sample:
Letter Notifying Bankrupt of Discharge



(Name and Address of Bankrupt)

_____, 19__

Dear _____:

This is to advise you that the Bankruptcy Court entered
its formal Order granting your discharge in Bankruptcy
on _____, 19__.

As I previously advised you, however, you are not
automatically protected by your discharge in bankruptcy.
That is to say, if anyone sues or otherwise annoys you in
connection with a debt listed in the bankruptcy proceeding,
steps must be taken to ensure your protection by the dis-
charge. I recommend, therefore, that you contact me in
the event you are troubled by any of your former creditors.

With best wishes for the future, I am

Sincerely yours,

(Signature of attorney)
(Typed name of attorney)

See Handling a Bankruptcy Case, Demonstration Case File

(Cal CEB 1963).

IV. VI

See Handbook of Geography and Statistics, Department of the Interior, Bureau of Land Management, Washington, D.C., 1903.

(See also 1903)